

THE AL-MEGRAHI RELEASE: ONE YEAR LATER

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

SEPTEMBER 29, 2010

Printed for the use of the Committee on Foreign Relations



Available via the World Wide Web: <http://www.gpoaccess.gov/congress/index.html>

U.S. GOVERNMENT PRINTING OFFICE

63-235 PDF

WASHINGTON : 2011

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON FOREIGN RELATIONS

JOHN F. KERRY, Massachusetts, *Chairman*

CHRISTOPHER J. DODD, Connecticut

RUSSELL D. FEINGOLD, Wisconsin

BARBARA BOXER, California

ROBERT MENENDEZ, New Jersey

BENJAMIN L. CARDIN, Maryland

ROBERT P. CASEY, JR., Pennsylvania

JIM WEBB, Virginia

JEANNE SHAHEEN, New Hampshire

EDWARD E. KAUFMAN, Delaware

KIRSTEN E. GILLIBRAND, New York

RICHARD G. LUGAR, Indiana

BOB CORKER, Tennessee

JOHNNY ISAKSON, Georgia

JAMES E. RISCH, Idaho

JIM DEMINT, South Carolina

JOHN BARRASSO, Wyoming

ROGER F. WICKER, Mississippi

JAMES M. INHOFE, Oklahoma

DAVID McKean, *Staff Director*

KENNETH A. MYERS, JR., *Republican Staff Director*

CONTENTS

	Page
Barrasso, Hon. John, U.S. Senator from Wyoming, prepared statement	47
Gillibrand, Hon. Kirsten E., U.S. Senator from New York, statement	8
Lautenberg, Hon. Frank R., U.S. Senator from New Jersey, statement	5
Prepared statement	7
List of "Victims of Pan Am 103 Bombing"	54
McEldowney, Hon. Nancy, Principal Deputy Assistant Secretary, Bureau of European Affairs, U.S. Department of State, Washington, DC	10
Prepared statement	14
Responses to questions submitted for the record by Senator Robert Menendez	62
Menendez, Hon. Robert, U.S. Senator from New Jersey, opening statement ...	1
Mohler, Dr. James, senior vice president for translation research, chair, Department of Urology, Roswell Park Cancer Center, Buffalo, NY	31
Prepared statement	33
Porter, Dr. Geoff, consultant, New York, NY	39
Prepared statement	41
Sartor, Dr. Oliver, Piltz Professor of Cancer Research, Departments of Medi- cine and Urology, Tulane Medical School, Tulane, LA	36
Prepared statement	38
Swartz, Hon. Bruce, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Washington, DC	17
Prepared statement	19

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Letter from Hon. Alex Salmond MSP, First Minister of Scotland, St. Andrew's House, Edinburgh, with an attachment letter from the Scottish Affairs Office, British Embassy	64
Written statements submitted from families of victims of Pan Am Flight 103	66

THE AL-MEGRAHI RELEASE: ONE YEAR LATER

WEDNESDAY, SEPTEMBER 29, 2010

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Robert Menendez, presiding.

Present: Senators Menendez, Gillibrand, and Barrasso.
Also Present: Senator Frank R. Lautenberg.

OPENING STATEMENT OF HON. ROBERT MENENDEZ, U.S. SENATOR FROM NEW JERSEY

Senator MENENDEZ. This hearing of the Senate Foreign Relations Committee will come to order. Good morning, everyone.

Let me start off by thanking our witnesses for being here today and participating in this critical hearing to shed some light on the troubling circumstances surrounding the early release of Abdelbasset al-Megrahi, the convicted Pan Am 103 Lockerbie bomber.

There are those within my own government, certainly within the Scottish and British Governments, and even some of my colleagues, who wonder why we have collectively pursued today's hearing. Why I am pushing—and have been pushing—for an investigation into the early release of al-Megrahi.

My staff and I have heard from many people who say, “You will never get al-Megrahi to return to prison, so why bother? Why,” they ask, “would we test the strong relationships between the United Kingdom and the United States? Why, when we have so many other important issues to worry about, like Afghanistan, Iran, and climate change, would you go down this road?”

Why? I will tell you why. Because on December 21, 1988, 270 innocent people were sent to their deaths at the hands of a Libyan terrorist, a mass murderer named Abdelbasset al-Megrahi. One hundred and eighty-nine of the victims were from the United States of America. Thirty-four of them were from New Jersey. Fifty-three of them were from New York. All tolled, we lost citizens from 21 States and the District of Columbia.

We are here today because it matters to those who lost their lives, to those who represented them, and, most importantly, it matters to their families. It matters very much. It matters also, in terms of the standards that we set for our fight against terrorism. Do we send a message that a convicted terrorist, a mass murderer can ultimately, after a period of time, be free and live in the lap

of luxury? Is that the message that we want to send to other would-be terrorists in the world? So, it matters to our national security, as well.

We will never forget, nor should we. And I am so, so sorry that we are inconveniencing those who would rather sweep this away into the dustbin of history.

We're here today because the terms of the 1998 Lockerbie justice agreement clearly state that any sentence must be served in the United Kingdom. In the letter of agreement from the United Kingdom and the U.S. Acting Permanent Representative to the United Nations, formally approved by the Security Council Resolution 1192, it states, "For the purpose of the trial, we shall not seek their transfer to any jurisdiction other than the Scottish court sitting in the Netherlands, and, if found guilty, the two accused will serve their sentence in the United Kingdom." The language of the agreement could not be any clearer: "they would serve their sentence in the United Kingdom."

We are a nation founded on the rule of law; and when the law and our notion of justice is turned on its head, for whatever reason, we believe it is our obligation to turn it back again. It is our obligation to ask hard questions, to demand answers, to get the truth, no matter where it leads or who might be inconvenienced by it.

The fact is that the Scottish Government claims to have released Mr. al-Megrahi from prison because he was dying of prostate cancer and had just 3 months to live. They offered him compassionate release, something that clearly is permissible under Scottish law. But, precedent provided that certain conditions be met. Had those conditions been met, had laws and precedent been appropriately followed, while I would still vehemently disagree with the decision, I would respect the right of the Scottish Government to exercise its jurisdiction. But, as we will see as the testimony unfolds, the release on compassionate grounds was deeply, deeply flawed, and perhaps even intentionally skewed to allow for Mr. al-Megrahi's release.

Scottish law allows prisoners who are suffering and have 3 months or less to live to receive consideration for compassionate release. As Scottish authorities said on August 20, 2009, Mr. Megrahi had 3 months or less to live, so they sent him home to die.

I'd like to have the video played, now, of Mr. al-Megrahi's release and trip back to Libya.

[Video presentation.]

Senator MENENDEZ. The video is important, for two reasons. We'll hear testimony about how someone who has the ability to walk up and down a flight of stairs by themselves, based upon the determination they had only 3 months to live, would not likely be able to do so. Second, the images at the end, at his reception in Libya, paint an image that is incredibly upsetting, to say the least, to have a hero's welcome, flag-waving admirers shouting his name, praising him, celebrating his return; a man who is supposedly dying. And here we are, 13 months after he landed back in Libya, and Mr. al-Megrahi is still alive, living in freedom. That's why we're here today, to get to the bottom of this miscarriage of justice.

Obviously the 3-month prognosis was wrong, yet, shockingly, Scottish authorities still, to this day, insist the initial prognosis

was correct. Well, Mr. al-Megrahi is alive. Instead of living 3 months, he's lived 13 months and counting, which clearly means someone was wrong, or worse.

This committee and the families of the victims want to understand how and why the decision to release was made. What were the circumstances behind it? Who made the medical judgments that led to it? Whose interests were served by his release, and were those interests discussed in advance of his release?

Now, we have tried to get the answers in a more comprehensive way. We have asked for the cooperation of numerous representatives from the Scottish Government, from the United Kingdom's Government, and representatives of BP. Over 30 people were asked to cooperate with our investigation—All refused.

Now, I understand the right of any foreign government official not to choose to participate, but these were clearly a unique set of circumstances in which I think the greater cause, the greater good, the greater transparency would have led to a degree of cooperation. They include former U.K. Ministers of Justice; the former U.K. Ambassador to Libya; the Scottish Secretary of Justice, Mr. MacAskill; Dr. Andrew Fraser, the Chief Medical Officer for the Scottish Prison Service; Dr. Peter Kay, Mr. al-Megrahi's primary-care physician; Dr. Latif, his consulting urologist; Drs. Jones and Howard, Mr. al-Megrahi's consulting oncologist; and many others.

I also want to make it clear, for the record, that we exchanged correspondence with Mr. al-Megrahi's Scottish lawyer, with a simple request: Authorize the release of your full medical records regarding the diagnosis, treatment, and prognosis of your prostate cancer. And we also asked, if they were unwilling to do so at this time, to allow for their publication upon his death. According to response we received from Mr. al-Megrahi's attorney, Mr. al-Megrahi has declined those requests.

Among those from BP who refused to cooperate with this investigation were Tony Hayward, the CEO; Andy Inglis, the chief executive of BP's exploration and production; Felipe Posada, chief executive of BP North Africa; Ian Smale, vice president for strategy; Sir Mark Allen, a consultant and former MI6 intelligence officer directly involved in this matter. All refused to cooperate.

I'm most concerned about the refusal of BP to send a single representative to this hearing. I'm concerned that BP, operating in our country, extracting resources, seeking permits for further drilling, is hiding information. I'm concerned, given their refusal to testify and tell us what they know about their lobbying efforts and advocacy for Mr. al-Megrahi's release, given their pitiful early reactions to the devastating spill in the gulf and their initial withholding information on the seriousness of the spill, that they are simply bad corporate citizens.

Hiding information then, hiding it now from the committee, I find reprehensible. I, frankly, don't know how BP expects to continue to do business in American if this is the way they treat Americans, including the families of the victims of al-Megrahi. I don't know why, given the circumstances, BP should get a single permit to do business in this country again. And I'll be looking at that in a separate forum.

Now let me go to the essence of what we will hope to achieve in the hearing. And I apologize for the extended nature of this opening statement, but given the challenges that we have had, we need to set the framework here of what we are trying to accomplish.

Notwithstanding the stonewalling this committee has been subjected to, today's hearing will thoroughly explore two central issues: First, how such an incorrect prognosis was made. I think we'll make quite clear that the basis for al-Megrahi's compassionate release was incorrect, so incorrect that the Scottish Government knew, or should have known, it was incorrect; and second, if the Scottish Government did know that Mr. al-Megrahi had more than 3 months to live, why would they release him?

We're here today to do what we can to get to the bottom of this. We owe it to ourselves as a nation founded on the rule of law. We owe it to the families. So, in the absence of those witnesses, we've gathered experts who will testify today about Mr. al-Megrahi's medical diagnosis. They'll tell us about the treatment he received, and the prognosis. They've evaluated the published facts released by the Scottish Government. These medical experts will be offering their assessment of that information. And, according to their written testimony, they will confirm what we have suspected all along: no medical professional familiar with prostate cancer, given the facts at hand, could reasonably have given a 3-month prognosis to Mr. al-Megrahi.

I also want to announce, at the outset of this hearing, that we have uncovered new information that the medical experts have considered.

First, an official with the Scottish Government confirmed that it was a general practitioner, Dr. Peter Kay, who gave the final 3-month prognosis when not one of the cancer specialists was willing to say that the 3 months was an appropriate prognosis.

We also have new information directly from a Scottish Government official concerning Mr. al-Megrahi's treatment. A medical report released by Scottish officials does not state that Mr. al-Megrahi received chemotherapy. And in fact, al-Megrahi's own statements in August 2009 stated that he had not received chemotherapy. But, we now have information from George Burgess, a Scottish Government official closely involved with al-Megrahi's case, who now says al-Megrahi did, in fact, start chemotherapy in July 2009. We have publicly released redacted medical records that say nothing about chemotherapy, but a Scottish Government official who says al-Megrahi was receiving chemotherapy. I'm not sure which version of the Scottish Government's story to believe, but I do know one thing: the discrepancy raises a number of questions, including why the information was not forthcoming.

Medical experts have said, in their testimony, that when a man has prostate cancer, and you believe he has less than 3 months to live, you do not give him chemotherapy. Instead, you try to allow him to live out his remaining days in as much comfort as possible.

This leads to new questions. Why is it denied, in official government documents, that Mr. al-Megrahi received chemotherapy in July 2009? Why did those documents not reveal the fact that Mr. al-Megrahi received chemotherapy in July 2009? Why are there discrepancies?

These questions may not be answered today and we'll likely only find the answers if and when British authorities finally undertake a truly independent inquiry, which I have urged the Prime Minister to do in a meeting with him when he was in the United States.

But the larger question, which we will explore further in this hearing, is why were the Scottish and British Governments so determined to release Mr. al-Megrahi? We have an expert today who'll testify about commercial concerns that may have influenced U.K. thinking on the merits of Mr. al-Megrahi's release, and how Libya uses its oil interest as a foreign policy tool.

We have a lot of ground to cover, so I won't take any more time.

I appreciate our distinguished colleague, who has been in pursuit of justice here for the families of Pan Am 103 from the very first days of the tragedy. And, without objection, I will turn to him first, because of his schedule, and then turn to other members who wish to make opening statements.

With that, let me recognize Senator Lautenberg.

**STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY**

Senator LAUTENBERG. Thank you, Mr. Chairman, for your diligence in pursuit of the truth as to what happened with this grotesque process, that we learned about and saw on the screen today, where this murderer was given a hero's welcome. And I think it was designed deliberately to give word to the world that Libya was thumbing its nose at what amounts to human atrocity that was perpetrated by the release of this man; this man who murdered so many.

And I thank the witness for being here. And I particularly want to note the presence of family members. Mr. Brian Flynn, from Montville, NJ—he lost his brother, John Patrick Flynn, age 21—someone I've gotten to know very well, as I have many of the victims' families. Bob Monetti, from Cherry Hill, NJ—his son, Rick, was aboard that plane. He was 20 years old. Eileen Walsh, from Glenn Rock, NJ, who lost her father, age 62, her brother, age 34, and a pregnant sister, Lorraine, age 31. Adelaide Marek lost her sister, Elizabeth, age 30, and Elizabeth and Dermot Delude-Dix lost her husband and father, Peter Dix, at age 35.

So, Mr. Chairman, when we see what we can describe as an act of betrayal—that's what we're looking at, an act of betrayal—unfortunately, by a country that has been one of our best friends: Scotland. And so, we look, with your direction here, to learn the truth. I started with a—on a commission appointed by President Bush; and for the past 22 years, I have personally witnessed the quest for justice these families—and the incredible decision to release this murderer.

Two hundred and seventy lives were lost in the Pan Am bombing. Thirty-eight came from our home State of New Jersey. They were on innocent travel. The average age on the airplane was 27. Many of the victims were college students returning home for the Christmas holidays. Instead of joy, they were robbed of the contacts with their children, never—and their families—never to see them again.

Soon after the bombing, I was appointed to a Presidential commission by, I mentioned, President George Bush, to investigate this bombing, and dispatched—we were dispatched to Lockerbie to learn more about this act of terror. As I saw firsthand, the Scottish authorities were clearly determined to get to the bottom of this mass murder. Policemen, in rows, I saw combing brush and grass, looking for the slightest clue. The diligence that went into this search, and the final conclusion, were clearly a consequence of their friendship to us and the consequence of the damage that happened to families not only in the airplane, but 11 people on the ground in the small town of Lockerbie perished at same time.

They were absolutely committed to not leave a stone unturned as they combed through the foliage and grassy areas, searching for even the tiniest scrap of evidence. And finally, over 10 years after the heinous act, the perpetrator, al-Megrahi, was brought to trial. And I worked hard, here in the Senate, to secure funding so that the victims' families could attend the trial that took place in The Hague. Megrahi's conviction brought them a small degree of comfort, knowing that a price would be paid for this unconscionable deed and that Megrahi would spend the rest of his life behind bars.

Unfortunately, the events of last summer tore apart this small satisfaction that they had, in that justice was being pursued. Al-Megrahi was supposedly suffering from a fatal form of cancer, and the Scottish Government decided to release this killer back to Libya on so-called compassionate grounds. What irony it is that this man who took these lives and, without a thought about it, planned carefully, the court decided that this was his idea and his management that brought that airplane down. And he is released on compassionate grounds.

We were told that he had just 3 months to live. And it was more than a year ago, and this murderer is still feted as a hero. And while Megrahi was sent home to his family, his victims never made it home to their families.

To add further pain to the victims' families, this murderer got a welcome unsubstantiated by anything done that—in his life, when he arrived in Tripoli, Libya.

Many questions surrounding the circumstances of Megrahi's release remain unanswered. The first is how the Scottish Government came to the diagnosis of Megrahi's imminent death, and whether cancer specialists were ever consulted.

We have also learned that BP entered, with their influence, anxious to get access to Libya's oil in the months leading up to the release. And it does not enhance their reputation to see that a company that misled Americans so often when trying to cure the problem that developed in the Gulf of Mexico, became involved with another business deal that they wanted to enter into. Didn't matter with whom and who was a culprit in a terrible atrocity. So, with that help, the Lockerbie bomber got out of jail free—perhaps bought with BP's oil.

Now, we don't know what role these commercial interests, and perhaps others, played in the final decision. But, we're absolutely—Mr. Chairman, evidenced by you and by Senator Gillibrand here and people from this committee—determined to find out. I requested this hearing, some time ago, last fall, soon after Megrahi's

release, to get to the bottom of these questions, and I'm pleased that the committee is holding this hearing today. But, I'm disappointed that the Scottish and the British Governments refused to show up at this hearing. It's outrageous that BP has refused to cooperate. If they are committed to the truth, then they have to give us the answers we need and that the victims' families deserve.

Make no mistake about it, we're not going to stop asking these questions. We seek answers. We plead for the truth on behalf of justice for the families of Pan Am 103.

Those who commit vicious acts of terrorism must know that they'll be punished. It took over 10 years to bring Megrahi to justice, and we're not going to give up, even if it takes another decade to discover the truth about his release.

And I thank you for the opportunity to testify today, and for holding this critical hearing.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG,
U.S. SENATOR FROM NEW JERSEY

Thank you, Mr. Chairman. And thank you to the witnesses joining us today. Most importantly, I want to thank the families of the Pan Am 103 victims. For the past 22 years, I have personally witnessed their quest for justice. Two hundred seventy lives were lost in the Pan Am bombing—38 came from my home State of New Jersey. The average age on the plane was 27: many of the victims were college students returning home for the holidays, but they never made it back to their families. Instead, they were robbed of their futures by this barbaric act.

Soon after the bombing, I was appointed to a Presidential commission to investigate this bombing and dispatched to Lockerbie to learn more about this terrorist act. As I saw firsthand, the Scottish authorities were clearly determined to get to the bottom of this mass murder. They were absolutely committed to leaving literally no stone unturned as they combed through the foliage and grassy areas searching for even the tiniest scrap of evidence to find the killers responsible for this cowardly act. Finally—over 10 years after the heinous act—the perpetrator, Megrahi, was brought to trial.

I worked here in the Senate to secure funding so the victims' families could attend the trial. Megrahi's conviction brought them a small degree of comfort, knowing that a price would be paid for this unconscionable deed, and Megrahi would spend the rest of his life behind bars.

Unfortunately, the events of last summer ripped open the wounds of these families. Megrahi was supposedly suffering from a fatal form of cancer, and the Scottish Government decided to release this killer back to Libya on so called compassionate grounds. We were told he had just 3 months to live. That was more than a year ago, and this murderer is still alive and free. While Megrahi was sent home to his family—his victims never made it home to theirs. To add insult to injury—this murderer was given a hero's welcome when he arrived in Tripoli.

Many questions surrounding the circumstances of Megrahi's release remain unanswered. The first is how Scotland came to the diagnosis of Megrahi's imminent death—and whether cancer specialists were ever consulted. We have also learned that BP was desperate to get access to Libya's oil in the months leading up to the release. Was the Lockerbie Bomber's "get out of jail free card" bought with BP's oil? We don't know what role these commercial interests—and perhaps others—played in the final decision, but we are absolutely determined to find out.

I requested this hearing last fall, soon after Megrahi's release, to get to the bottom of these questions—and I am pleased the committee is holding it today. But I am disappointed that the Scottish and British Governments refused to show up at this hearing. And I am truly outraged that BP has refused to attend. If they are committed to the truth, then they must give us the answers we need—and that the victims' families deserve. Make no mistake: we're not going to stop asking these questions. We want answers. We want the truth. And we want justice for the families of Pan Am 103.

Those who commit vicious acts of terrorism must know that they will be punished. It took over 10 years to bring Megrahi to justice. We will not give up even if it takes

another decade to discover the truth about his release. Thank you for inviting me to testify today—and for holding this critical hearing.

[EDITOR'S NOTE.—The list of “Victims of Pan Am 103 Bombing” submitted by Senator Lautenberg as an attachment to his statement can be found in the “Additional Material Submitted for the Record” section of this hearing.]

Senator MENENDEZ. Thank you for that, Senator Lautenberg. And thank you for your continuing commitment to helping us get to the truth.

Senator Gillibrand.

**STATEMENT OF HON. KIRSTEN E. GILLIBRAND,
U.S. SENATOR FROM NEW YORK**

Senator GILLIBRAND. Thank you, Senator Lautenberg, for your testimony and your passion and your dedication to finding justice in this matter.

And thank you, Senator Menendez, for holding this hearing, and for your extraordinary leadership in demanding justice and accountability, and doing all that you can to bring light to an area that is very disturbing for all of us.

I also want to thank Dr. James Mohler, chair of the Urology Department, Roswell Cancer Center, and professor of urology at the University of Buffalo, who will be joining us later today for our hearing and offering testimony.

We have the moral responsibility to investigate why a convicted terrorist responsible for taking so many innocent lives, including 185 Americans, now walks free and lives in the lap of luxury. We have to know how an oil company was able to reap actual profits from the course of these events.

If we don't know what went wrong, we will never be able to make sure it's right in the future. If we don't know how a guilty terrorist could go free, then we will not be able to hold international terrorists accountable in the future.

The mystery over al-Megrahi's medical diagnosis becomes clearer every single day. Experts are testifying today that his diagnosis was a sham and that justice was compromised to serve BP's financial interests.

The reports are extremely concerning, from conflicting analysis of al-Megrahi's diagnosis to BP's own admission of its involvement in this case. That's why we asked for an independent inquiry. Did BP's financial interest in drilling in Libya contribute to or influence in any way, directly or indirectly, the release of al-Megrahi?

BP admitted, in 2007, that it told the U.K. Government that it is concerned that a delay might—that the delay in concluding a Prisoner Transfer Agreement with the Libyan Government might hurt the deal it had just signed. It also has been reported that a special advisor to the company named Mark Allen, formerly of MI6 and well-connected in Labor Party circles, raised the transfer agreement with then-Justice Secretary Jack Straw. Mr. Straw's letters to the Scottish Justice Ministry, Kenny MacAskill, indicate that the British Government gave in to Libya's demands for a convicted Lockerbie terrorist to go free.

This evidence, although circumstantial, is deeply troubling, not just for the families of the Lockerbie victims, but for all Americans

and all nations of the world who are committed to bringing terrorists to justice.

Last summer, working with my colleagues Senator Menendez, Senator Lautenberg, and Senator Schumer, I called on the U.K. Government to conduct an independent investigation into this matter. We had a very productive meeting with Prime Minister Cameron during his first visit to the United States, and he pledged that his government would do all it could do to rereview the documentary evidence related to the al-Megrahi case, and stated that if their review turned up concerns, they would consider a full investigation.

But, we have the tools of our own, right here in our own government, to take a long, hard look at this case, starting with this hearing today. We hope to uncover the real reasons that a convicted terrorist was released.

I am grateful that Prime Minister Cameron took time to meet with my colleagues and I on this matter during his first visit to America as Prime Minister. And I appreciate his pledge to us that his government would rereview the documents in the matter. However, I still believe we do need a full investigation, including testimony of the al-Megrahi release, so that we can learn from this mistake and assess what steps can be taken so that justice is served and terrorists are held accountable in future cases.

Beyond our discussion today, we need two things. We need the U.K. Government to continue their review and proceed to a full and independent investigation into this matter, including taking full testimony. And we need BP to release all the correspondence on this issue, so that the public knows that we are getting all of the evidence and all of the facts, so we can have transparency and full disclosure in this case.

I am hopeful that we begin—as we begin to uncover the facts today, that we will learn more about what happened here, because justice must be done in this case. If we are ever going to win the fight against terrorism, the rule of law must hold strong.

Thank you, Mr. Chairman, for holding this hearing. And, again, thank you, Senator Lautenberg and Senator Schumer, for your leadership on this matter.

Senator LAUTENBERG. May I be excused, Mr. Chairman?

Senator MENENDEZ. Yes, Senator Lautenberg. Thank you very much. We appreciate it.

Thank you, Senator Gillibrand, for your statement, as well as for your leadership and your consistent effort in this regard. I appreciate all the help that you've lent the Chair in our effort to get to information.

Before I call up the first panel, let me ask unanimous consent to include documents into the record, including the 1998 Lockerbie Justice Agreement, U.N. Security Council Resolution 1192, the Scotland Act of 1998, statements from victims' families, and other relevant documents to this hearing.

Without objection, so ordered.

[EDITOR'S NOTE.—The first three documents will be maintained in the permanent record of the committee. The family statements and letters can be found in the "Additional Material Submitted for the Record" section of this hearing.]

Senator MENENDEZ. Let me ask the first panel to step forward, and, as they do, I will introduce them. Our first panelists are from the Department of State and the Department of Justice. We appreciate both of them being here. Ambassador Nancy McEldowney, is the Principal Deputy Assistant Secretary of State at the Bureau of European and Eurasian Affairs at the State Department. She has served as U.S. Ambassador to Bulgaria, the Deputy Chief of Mission in Ankara, Turkey, and in Baku, Azerbaijan. Ambassador McEldowney has also served at the White House, as Director of European Affairs on the National Security Council. She has held a series of posts at embassies abroad. We thank you very much for being with us today and look forward to your testimony.

Joining the Ambassador is Deputy Assistant Attorney General Bruce Swartz. Mr. Swartz was appointed Deputy Assistant Attorney General in January 2000. He served as deputy independent counsel in the HUD corruption investigations, as counsel for international law enforcement. He was also detailed to the U.K. Serious Fraud Office. He has served as counsel to the assistant attorney general and as a law clerk to Justice Harry Blackmun.

Thank you very much for being here. I'm hoping that your testimony and answers will help us get to some of the facts.

And, with that, Ambassador, let me start with you, to have a 5-minute summation of your testimony. We shall include both of your full testimonies for the record. And, with that, Ambassador, you may start.

STATEMENT OF HON. NANCY McELDOWNEY, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF EUROPEAN AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC

Ambassador McELDOWNEY. Thank you very much, Senator.

I'd like to begin by thanking you and the other members of the committee for convening this very important hearing.

I am also pleased and quite honored to be able to join you and to offer the State Department's perspective on the circumstances surrounding the release, last year, of Abdelbasset al-Megrahi, who was convicted in 2001 and sentenced to life imprisonment for the bombing of Pan Am Flight 103.

Lockerbie was an act so savage that, even today, when reminders of terrorism are a daily event, as all of us have seen, when we open the newspapers this morning and saw the reports from the closure of the Eiffel Tower, that this tragedy continues to stir powerful emotions, not only among the family and friends of those who were lost, but across the United States and around the world.

Those emotions are shared by hundreds of U.S. employees who have dedicated countless hours to this case over the years. All of them have carried an abiding commitment to the memory of those lives cruelly cut short, and to the determination to ensure that justice is served. For Secretary Clinton, that commitment is both personal and unshakably held.

Because of the horrific nature of this crime, it was the position of the United States Government, when Megrahi was put on trial, that any sentence of imprisonment should be served to its full completion in Scotland. That has been our unwavering and categorically stated position ever since.

It is the view of this administration that the decision by Scottish authorities to release Megrahi and permit his return to Libya was profoundly wrong. It was morally wrong because it was an affront to the victims' families and the memories of those who were killed. It was politically wrong because it undermined a shared international understanding on Megrahi's imprisonment. And it was wrong from a security perspective because it signaled a lack of resolve to ensure that terrorists are decisively brought to justice.

As Secretary Clinton and President Obama have repeatedly stated, a resolute conviction remains that Megrahi should not be a free man and should be serving out the entirety of his sentence in Scotland.

The diplomatic and legal efforts to investigate and pursue justice for those killed in Lockerbie have spanned over two decades. In response to the express interests of this committee, I will focus my testimony primarily on the efforts of the United States Government to ensure that Megrahi remained imprisoned in Scotland.

Before I do, however, I would like to briefly describe the circumstances which led to Megrahi's imprisonment in the first place. In November 1991, after a joint United States-Scottish investigation, both the United States and Scotland brought criminal charges against two Libyan nationals, Abdelbasset al-Megrahi and Lamin Khalifah Fhimah. The United States made clear—throughout the 1990s, as Libya resisted handing over the accused, in the face of U.N. Security Council resolutions and international sanctions—our resolve that the perpetrators of this crime must be brought to justice.

In an effort to break the long stalemate, the United States and United Kingdom Governments jointly proposed, in 1998, an exceptional arrangement for the Libyan suspects to stand trial before a Scottish court established in the Netherlands. These arrangements are described in detail in the August 24, 1998, letter to the U.N. Secretary General, authored by the United States and the United Kingdom, that you, Senator, have made reference to. In this letter, the United States and Britain confirmed, together, that, if found guilty, the two accused will serve their sentence in the United Kingdom.

As the joint U.S.-U.K. letter clearly reflects, at the time Megrahi was transferred from Libya to face trial, there existed a shared and very clear understanding between the United States, the United Kingdom, and Libya that he would serve his sentence in Scotland, if convicted.

On July 3, 2009, the British Foreign Office confirmed, in a letter which has now been made public, a letter to the Scottish authorities that stated, in the late 1990s the U.K. Government was committed to ensuring that the Lockerbie accused were tried before a Scottish court in the Netherlands, and, if convicted, they would serve out their sentences in Scotland, in accordance with Scots law.

In response to United States requests in 1998 for binding—legally binding assurances that the accused would not later be transferred to Libya, the then-British Government maintained that it could not enter into a legally binding commitment that would constrain the hands of future British Governments, but they nonetheless assured us of their political commitment that, if convicted,

Megrahi would remain in Scotland until the completion of his sentence.

In January 2001, Megrahi was convicted of 270 counts of murder and sentenced to life imprisonment. As Libya accepted responsibility and complied with an agreed settlement on compensation to the victims' families, efforts began to reintegrate the country into the international community and steer it on to a more positive path. The U.N. Security Council formally lifted international sanctions in 2003.

In December 2003, with encouragement from the United States and the United Kingdom, the Libyan Government announced its landmark decision to voluntarily dismantle its WMD and missile programs. In recognition of this shift toward Libya eventually becoming a constructive contributor to international peace and stability, the United States embarked on a step-by-step process of normalization and removal of sanctions as Libya followed through and implemented its commitments.

This process culminated 3 years later, in 2006, in the reestablishment of full diplomatic relations between the United States and Libya. At no point during this reengagement did the United States ever deviate from its longstanding position on Megrahi's continued imprisonment in Scotland.

During this same period, the United Kingdom pursued its own reengagement with the Libyan Government, reestablishing diplomatic relations in 1999 as Libya cooperated with the Lockerbie trial and handed over the accused.

In May 2007, then-Prime Minister Tony Blair traveled to Libya to sign a series of bilateral agreements, including a memorandum of understanding on negotiations for a Prisoner Transfer Agreement. During this same 2007 visit, BP signed an exploration and production-sharing agreement with the Libyan Government. This committee has expressed a legitimate interest in knowing what role BP may have played in the process of negotiating the Prisoner Transfer Agreement, or the PTA.

Both BP and the British Government have acknowledged publicly their discussions that took place on this issue in October and November 2007. According to Foreign Secretary Hague's July 22 letter to Senator Kerry, BP told the U.K. Government that failure to conclude the PTA could negatively impact British commercial interests, including its own.

In attempting to provide this committee with all relevant information, we have examined all available State Department records and have not identified any further materials, beyond publicly available statements and correspondence, concerning attempts by BP or other companies to influence matters related to Megrahi's transfer under the PTA, or his release by Scottish authorities.

Given that Scottish authorities would be the ultimate arbiters of any transfer application for Megrahi, their vehement public opposition to his eligibility under a potential PTA, and their anger upon learning a specific exclusion would not be included in the agreement, these factors reassured us, through much of 2008, that they shared our views on his continued imprisonment in Scotland.

Throughout this period, we continued, both publicly and privately, to restate U.S. Government views, and we have public docu-

ments to share with you to that effect. However, a new element was introduced when we learned of Megrahi's diagnosis with terminal prostate cancer in October 2008. Former Foreign Secretary David Miliband later explained to the House of Commons, in October 2009, that, "British interests, including those of U.K. nationals, British businesses, and possibly security cooperation, would be damaged, perhaps badly, if Megrahi were to die in a Scottish prison rather than in Libya." The Foreign Secretary further stated that, "Given the risk of Libyan adverse reaction, we made it clear to them that, as a matter of law and practice, it was not a decision for the U.K. Government, and that, as a matter of policy, we were not seeking Megrahi's death in a Scottish prison—in Scottish custody."

Weeks after Megrahi's diagnosis, in November, the U.K. and Libya signed the PTA, and it entered into force on April 29, 2009. Six days later, on May 5, the Libyan Government submitted its application for Megrahi's transfer to Libya under the auspices of the PTA. Throughout this period, the United States continued to communicate unequivocally to both the U.K. and the Scottish authorities our longstanding policy that Megrahi should serve out his complete sentence in Scotland, regardless of the state of his health, the impact on other countries' interests, or the possible Libyan reaction.

As the U.K. and Libya moved forward with the PTA, we intensified our efforts to dissuade Scottish authorities from transferring Megrahi to Libya. Secretary Clinton highlighted our longstanding position directly to Scottish First Minister Alex Salmond soon after taking office, during a meeting in Washington in February 2009. Two months later, in April, the United States formally communicated to both British and Scottish Governments that the imminent entry into force of the PTA did not change our longstanding position. We also underscored this message in April to senior officials in Tripoli. And, as my colleague from the Department of Justice will clarify, so did Attorney General Holder, in a June phone call to Scottish Justice Minister MacAskill.

On July 24, Megrahi submitted to Scottish authorities an application for his release on compassionate grounds as permitted under Scottish law. Subsequent to this application, during the second week of August, the State Department again communicated to Scottish justice officials and to First Minister Salmon directly our steadfast conviction that Megrahi should remain imprisoned in Scotland for the entirety of his sentence, as previously agreed.

We took the exceptional step of releasing this diplomatic community publicly, because we felt it was so important to clarify our views. Given the compassionate release was under consideration in Edinburgh, we also underscored to Scottish authorities that, should they proceed with compassionate release despite our objections, under no circumstances should they permit Megrahi to return to Libya. We argued that if they decided they must release Megrahi, over our protests, that he should be confined to Scotland, remain under the close supervision of authorities, and that an independent and comprehensive medical exam clearly establish that he had less than 3 months to live.

Senator MENENDEZ. Ambassador, if I could ask you to—

Ambassador McELDOWNEY. Please.

Senator MENENDEZ.—at this point, summarize.

Ambassador McELDOWNEY. Yes. Let me just—we emphasized that we did not endorse any release of Megrahi, in light of the seriousness of his crimes.

Let me just also—let me conclude by noting that, when Scottish Justice Minister MacAskill announced, on August 20, that, while he had decided to reject Megrahi's application for transfer under the PTA, but would nonetheless grant his application for release on compassionate grounds, he explained his decision by noting that there had been no contact between BP or Scottish authorities on this issue and that the decision was based solely on judicial grounds, without political or economic consideration. He also stated, and stated subsequently, that the decision to proceed with so-called "compassionate release" was based on the medical advice provided by the Scottish prison service, and that additional medical experts, compensated by the Libyan Government, played no part in the decision.

While the Department of State has no evidentiary basis to disprove these statements, we believe that the fundamental truth remains that the decision to release Megrahi back to Libya was a grievous mistake.

British Prime Minister Cameron has stated that he shares these views and, as previously noted, has undertaken a review of available government documents to see if further material can be brought to light.

We have also called upon the Scottish Government to be as transparent as possible in illuminating their decision. And, in particular, we believe that a decision by the Scottish authorities to release the medical documentation that led to a determination of Megrahi's life expectancy would be appropriate and would assist in further understanding the basis of their decision.

As President Obama has stated, all the relevant facts in this case should be made available. This committee, the victims' families, and the American people deserve nothing less.

We value this committee's important efforts to help us achieve this goal, and appreciate this opportunity to cooperate with you.

Thank you very much.

[The prepared statement of Ambassador McEldowney follows:]

PREPARED STATEMENT OF AMBASSADOR NANCY McELDOWNEY, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF EUROPEAN AND EURASIAN AFFAIRS, BUREAU OF EUROPEAN AFFAIRS, U.S. DEPARTMENT OF STATE

Thank you, Senator Menendez, for this opportunity to share with you and other members of the committee the State Department's perspective on the circumstances surrounding the release last year of Abdelbasset al-Megrahi, who was convicted in 2001 and sentenced to life imprisonment for the bombing of Pan Am Flight 103.

Lockerbie was an act so savage that even today, an age when reminders of the threat of terrorism are a daily occurrence, the tragedy continues to stir powerful emotions, not only among the family and friends of those who were lost, but also across the United States and around the world. Those emotions are shared by the hundreds of U.S. Government employees who have dedicated countless hours to this case over the years. All have carried with them an abiding commitment to the memory of those lives cruelly cut short and to the determination to ensure that justice is served. For Secretary Clinton, that commitment is both personal and unshakably held.

Because of the horrific nature of this crime, it was the position of the United States Government when Megrahi was put on trial that any sentence of imprisonment should be served to its full completion in Scotland. That has been our unwavering and categorically stated position ever since.

It is the view of this administration that the decision by Scottish authorities to release Megrahi and permit his return to Libya was profoundly wrong: morally wrong because it was an affront to the victims' families and the memories of those killed; politically wrong because it undermined a shared international understanding on Megrahi's imprisonment; and wrong from a security perspective because it signaled a lack of resolve to ensure terrorists are decisively brought to justice. As Secretary Clinton and President Obama have repeatedly stated, our resolute conviction remains that Megrahi should not be a free man and should be serving out the entirety of his sentence in a Scottish prison.

The diplomatic and legal efforts to investigate and pursue justice for those killed in Lockerbie have spanned over two decades. In response to the expressed interests of the committee, I will focus my testimony primarily on the efforts of the U.S. Government to ensure that Megrahi remained imprisoned in Scotland.

HISTORIC UNDERSTANDING ON IMPRISONMENT

Before I do so, however, I would like to briefly describe the circumstances which led to Megrahi's imprisonment in the first place. In November 1991, after a joint U.S.-Scottish investigation, both the United States and Scotland brought criminal charges against two Libyan nationals, Abdelbasset al-Megrahi and Lamin Khalifah Fhimah, in connection with the bombing of Pan Am 103. The United States made clear throughout the 1990s, as Libya resisted handing over the accused in the face of U.N. Security Council resolutions and international sanctions, our resolve that the perpetrators of this crime must be brought to justice. In an effort to break the long stalemate, the U.S. and U.K. governments jointly proposed in 1998 an exceptional arrangement for the Libyan suspects to stand trial before a Scottish court established in the Netherlands. The arrangements are described in detail in the August 24, 1998, letter to the U.N. Secretary General authored by the United States and United Kingdom. In the letter, the United States and Britain together affirmed that "If found guilty, the two accused will serve their sentence in the United Kingdom."

As the joint U.S.-U.K. letter reflects, at the time Megrahi was transferred from Libya to face trial, there existed a shared understanding between the United States, the United Kingdom, and Libya that he would serve his sentence in Scotland if convicted. On July 3, 2009, the British Foreign Office confirmed in a now-public letter to Scottish authorities that in the late 1990s "the U.K. Government was committed to ensuring that the Lockerbie accused were tried before a Scottish Court in the Netherlands and, if convicted, they would serve out their sentences in Scotland, in accordance with Scots law." In response to U.S. requests in 1998 for binding assurances that the accused would not later be transferred to Libya, the then British Government maintained it could not enter into a legally binding commitment that would constrain the hands of future British governments. They nonetheless assured us of their political commitment that, if convicted, Megrahi would remain in Scotland until the completion of his sentence.

U.S. REENGAGEMENT WITH LIBYA

In January 2001, Megrahi was convicted of 270 counts of murder and sentenced to life imprisonment. As Libya accepted responsibility and complied with an agreed settlement on compensation to the victims' families, efforts began to reintegrate the country into the international community and steer it onto a more positive path. The U.N. Security Council formally lifted international sanctions in September 2003, though the United States maintained its own sanctions because of continuing concerns about Libyan behavior.

Three months later, in December 2003, with encouragement from the United States and United Kingdom, the Libyan Government announced its landmark decision to voluntarily dismantle its WMD and missile programs. In recognition of this shift toward Libya becoming a constructive contributor to international peace and security, the United States embarked on a step-by-step process of normalization and removal of sanctions as Libya followed through and implemented its commitments. This process culminated 3 years later, in 2006, in the reestablishment of full diplomatic relations between the United States and Libya. At no point during this reengagement did the United States deviate from its longstanding position on Megrahi's continued imprisonment in Scotland.

UNITED KINGDOM, LIBYA, AND THE PRISONER TRANSFER AGREEMENT

The United Kingdom pursued its own reengagement with the Libyan Government during this same period, reestablishing diplomatic relations in 1999 as Libya cooperated with the Lockerbie trial and handed over the accused. In May 2007, then Prime Minister Tony Blair traveled to Libya to sign a series of bilateral agreements, including a memorandum of understanding on negotiations for a Prisoner Transfer Agreement (PTA). During this same 2007 visit, BP signed an Exploration and Production Sharing Agreement with the Libyan Government.

This committee has expressed an interest in what role BP may have played in the process of negotiating the PTA. Both BP and the British Government have acknowledged publicly their discussions that took place on this issue in October and November 2007. According to Foreign Secretary Hague's July 22 letter to Senator Kerry, BP told the U.K. Government that failure to conclude the PTA could negatively impact British commercial interests, including its own. In attempting to provide this committee with all relevant information, we have examined all available State Department records and have not identified any materials, beyond publicly available statements and correspondence, concerning attempts by BP or other companies to influence matters related to Megrahi's transfer under the PTA or his release by Scottish authorities.

Given that Scottish authorities would be the ultimate arbiters of any transfer application for Megrahi, their vehement public opposition to his eligibility under a potential PTA—and their anger upon learning a specific exclusion would not be included in the agreement—reassured us through much of 2008 that they shared our views on his continued imprisonment in Scotland. A new element was then introduced when we learned of Megrahi's diagnosis with terminal prostate cancer in October 2008. Former Foreign Secretary David Miliband later explained to the House of Commons in October 2009 that "British interests, including those of U.K. nationals, British businesses, and possibly security cooperation, would be damaged—perhaps badly—if Megrahi were to die in a Scottish prison rather than in Libya." The Foreign Secretary further stated that "Given the risk of Libyan adverse reaction, we made it clear to them that as a matter of law and practice it was not a decision for the U.K. Government and that as a matter of policy we were not seeking Megrahi's death in Scottish custody."

U.S. OPPOSITION TO TRANSFER OR RELEASE

Weeks after Megrahi's diagnosis, in November, the U.K. and Libya signed the PTA, and it entered into force on April 29, 2009. Six days later, on May 5, the Libyan Government submitted its application for Megrahi's transfer to Libya under the auspices of the PTA. Throughout this period, the United States continued to communicate unequivocally to both the U.K. and Scottish authorities our longstanding policy that Megrahi should serve out his complete sentence in Scotland, regardless of the state of his health, the impact on other countries' interests, or the possible Libyan reaction.

As the U.K. and Libya moved forward with the PTA, we intensified our efforts to dissuade Scottish authorities from transferring Megrahi to Libya. Secretary Clinton highlighted our longstanding position directly to Scottish First Minister Alex Salmond soon after taking office, during a meeting in Washington in February 2009. Two months later, in April, the United States formally communicated to both the British and Scottish governments that the imminent entry into force of the PTA did not change our longstanding position on Megrahi's incarceration. We also underscored this message in April to senior officials in Tripoli, as did Attorney General Holder in a June phone call to Scottish Justice Minister Kenny MacAskill.

On July 24, Megrahi submitted to Scottish authorities an application for his release on compassionate grounds, as permitted under Scottish law. Subsequent to this application, during the second week of August, the State Department again communicated to Scottish justice officials and First Minister Salmond our steadfast conviction that Megrahi should remain imprisoned in Scotland for the entirety of his sentence as previously agreed. The text of this diplomatic communication was released by the State Department on July 26 of this year. Given that the compassionate release option was under consideration in Edinburgh, we also underscored to Scottish authorities that should they proceed with release despite our objections, under no circumstances should they permit Megrahi to return to Libya. We argued that if they decided they must release Megrahi over our protests, he should be confined to Scotland, remain under the close supervision of authorities, and that an independent and comprehensive medical exam clearly establish that he had less than 3 months to live. We emphasized that we did not endorse any release in light of the seriousness of Megrahi's crimes, but that such a tightly conditioned scenario

would be less objectionable than any outcome that permitted his return to Libya. Secretary Clinton reinforced this message in a phone call to Justice Minister MacAskill on August 13, as did Deputy National Security Advisor John Brennan on August 19.

MEGRAHI'S RELEASE AND U.S. REACTION

To our grave disappointment, Mr. MacAskill announced on August 20 his decision to reject Megrahi's application for transfer under the U.K.-Libya PTA but to grant his application for release on compassionate grounds. In choosing the latter option, the Scottish Government not only permitted Megrahi's return to Libya, as would have occurred under prisoner transfer, but allowed him to do so as a free man able to spend the remainder of his life at home with his family and friends—a clear travesty of justice.

In explaining the decision, both at the time and subsequently, Mr. MacAskill and Mr. Salmond have stated that there was no contact between BP and Scottish authorities on this issue and that the decision was based solely on judicial grounds without political or economic consideration. They have also stated that the decision to proceed with so-called "compassionate" release was based on the medical advice provided by the Director of Health and Care of the Scottish Prison Service that 3 months was a reasonable prognosis for Megrahi's life expectancy, and that additional medical experts compensated by the Libyan Government played "no part in the decision."

The Department of State has no evidentiary basis to dispute or disprove these statements, but the fundamental truth remains that the decision to release Megrahi back to Libya was a grievous mistake. British Prime Minister David Cameron has stated that he shares this view, and the Prime Minister has asked the U.K.'s Cabinet Secretary to conduct a review of British documents to determine if any further relevant materials can be brought to light. We have also called upon the Scottish Government to be as transparent as possible in illuminating the circumstances surrounding their decision. In particular, we believe that a decision by the Scottish authorities to release the medical documentation that led to a determination of Megrahi's life expectancy would be appropriate and assist in further understanding the basis of their decision.

As President Obama has stated, all the relevant facts in this case should be made available. The committee, the victims' families, and the American people deserve nothing less. We value the committee's important efforts to shed light on this issue and appreciate this opportunity to cooperate with you toward achieving that goal.

Senator MENENDEZ. Thank you very much.
Mr. Swartz.

STATEMENT OF HON. BRUCE SWARTZ, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. SWARTZ. Mr. Chairman, Senator Gillibrand, members of the committee, family members of the victims of Pan Am 103, thank you for this opportunity to appear this morning on behalf of the Department of Justice to discuss the release of Abdelbasset al-Megrahi, the convicted Pan Am 103 bomber.

There are three points I would like to make this morning.

First, the Department of Justice has pursued this case relentlessly—our prosecutors and our FBI agents—for over two decades.

Second, as part of that pursuit of justice, the Department of Justice, along with the Department of State, has taken the unwavering position that al-Megrahi, upon his conviction, should serve his entire sentence in Scotland, and should not be returned to Libya under any circumstances.

And third, again as part of that commitment to this matter, upon Megrahi's release, the Department of Justice, through the Attorney General and the Director of the FBI, took the unusual step of publicly and explicitly denouncing this step by the Government of

Scotland, and furthermore made clear their disappointment and distress, disappointment and distress that continues to this day.

Let me turn to my first point. The Department of Justice has been involved in this matter from the day of the bombing, itself. The Federal Bureau of Investigation, via its legal attaché in London on the day of the bombing, quickly established contact with the Scottish police. And on the next day, an FBI team was dispatched to Scotland. As Senator Lautenberg has eloquently noted today, the Scottish police engaged in a enormous investigation, which we were proud to be part of. And we closely collaborated to ensure that justice was secured in this matter.

After many months of relentless effort on both sides of the Atlantic, prosecutors in the criminal division of the Department of Justice and the U.S. Attorney's Office, here in the District of Columbia, presented a case to a grand jury, here in Washington. On November 14, 1991, an indictment was unsealed charging Megrahi and his codefendant, Lamin Fhimah, with the bombing of Pan Am Flight 103. That same day, as you know, the Lord Advocate of Scotland announced the filing of parallel charges in Scotland.

Mr. Chairman, with your permission, I'd like, today, to recognize the commitment of the career prosecutors and agents, some of whom are here today, the victim witness advocates who have dedicated their careers to ensuring that justice is done in this matter.

My second point, Mr. Chairman and members of this committee, is that, as part of this commitment to justice, the Department of Justice, at the highest levels and in every communication, has made clear our unwavering position that, once the conviction was obtained, Megrahi should serve the entirety of his life sentence in Scotland and not be transferred or released to return to Libya before the conclusion of his sentence.

Indeed, the potential place of imprisonment was one of the earliest issues raised by the United States in connections with the negotiations for a trial before a Scottish court in the Netherlands. As Ambassador McEldowney has noted in her testimony, the August 24, 1998, United States-United Kingdom letter to the U.N. Secretary General affirmed that, if found guilty, the two accused will serve their sentence in the United Kingdom. And while there was not an internationally binding agreement to this effect, the then-British Government, in 1998, assured us of their political commitment that, if convicted, Megrahi would remain in Scotland until the completion of his sentence. And the Department of Justice actively participated in the negotiations that led to that understanding.

In 2007, however, as you know, the United Kingdom entered into a memorandum of understanding with Libya on negotiations for a Prisoner Transfer Agreement, and it signed such an agreement in November 2008. The Prisoner Transfer Agreement entered into force on November 29, 2009; and only a few days thereafter, Libya applied for the transfer of Megrahi. Under devolution of course, the decision on the prisoner transfer of Megrahi rested with the Scottish executive. Accordingly, the United States, consistently and at the highest levels, communicated our vehement objection to any transfer by the Scottish authorities of Megrahi to Libya.

In a personal phone call to Scottish Justice Minister Kenny MacAskill, Attorney General Holder was adamant that assurances had been given to the United States Government that any person convicted would serve his sentence in Scotland. This clear understanding was also reiterated in the call by Secretary of State Clinton to Minister MacAskill, and Mr. MacAskill recognized and noted both of these calls in his decision on prisoner transfer.

But, subsequently to the prisoner transfer application, as you also know, on July 24, 2009, Megrahi submitted an application to the Scottish authorities for compassionate release on the grounds he had prostate cancer. Mr. Chairman, as you recognized, compassionate release is a different matter from prisoner transfer, and the United States had previously acknowledged that compassionate release was provided for under Scottish law, and presented different issues than prisoner transfer that could be discussed at the time such an application was made. But, once the application was made, the United States Government made explicit our opposition, as Ambassador McEldowney has made clear, to any such release, and took the position that if our opposition were overruled, release should come only under two conditions: first, that there be independent and comprehensive medical exams establishing he had less than 3 months to live; and second, that he remain in Scotland under supervision. As you know, sadly, neither condition was met.

That brings me to our third point: the Department of Justice's unusual, immediate, and unequivocal public denunciation of the decision to release Megrahi. After his release, Attorney General Holder immediately condemned the decision as unjustified, and publicly reiterated that it continued to be the Justice Department's position that Megrahi should have been required to serve the entire sentence handed down on him for his crimes. Similar views were stated by FBI Director Robert Mueller, who, in his former position as Assistant Attorney General for the Criminal Division, had led the investigation that led to Megrahi's indictment in 1991.

On August 21, 2009, the day after Megrahi was released, Director Mueller wrote a letter to Scottish Justice Secretary Kenny MacAskill, stating that the release was, "as inexplicable as it is detrimental to the cause of justice," and, "makes a mockery of the rule of law." "Most importantly," Director Mueller continued in the letter, "your action makes a mockery of the grief of the families who lost their own on December 21, 1998."

In closing, Mr. Chairman, members of the committee, let me say that the sentiments expressed a year ago by Attorney General Holder and Director Mueller remain those of the Department today.

Thank you, and I look forward to your questions.
[The prepared statement of Mr. Swartz follows:]

PREPARED STATEMENT OF HON. BRUCE SWARTZ, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. Chairman, Ranking Member Lugar, members of the committee, and family members of the victims of Pan Am Flight 103, thank you for inviting me to testify on behalf of the Department of Justice about the Scottish Cabinet Secretary for Justice's release on compassionate grounds of Abdel Basset Ali Mohmed al-Megrahi.

I would like today to make three points. First, the Justice Department has relentlessly pursued justice for the victims and families of Pan Am Flight 103 for over two decades. Second, throughout that time, the U.S. Government—through the

Department of State and the Department of Justice—consistently took the position that Megrahi, if tried before a Scottish court, should serve his sentence in Scotland and under no circumstance be transferred to, or allowed to, return to Libya prior to the conclusion of any such sentence. And third, when Megrahi was released from a Scottish prison on compassionate grounds and allowed to return to Libya, the Attorney General and the Director of the FBI immediately and publicly expressed their profound disagreement with, and distress over, the decision by the Scottish Cabinet Secretary for Justice—disagreement and distress that continues to this day.

BACKGROUND

Before turning to these three points, I would like to provide some background to this matter. On January 31, 2001, following an 8-month trial before the Scottish Court in the Netherlands, Megrahi was convicted by a unanimous panel of judges of the murder of the 259 passengers and crew on Pan Am Flight 103, and of the 11 residents of the Scottish town of Lockerbie, Scotland. Megrahi was immediately sentenced to life imprisonment by the Scottish Court, with the minimum period that he was required to serve before becoming eligible to apply for parole set at 27 years. The following year, an appeal by Megrahi was rejected as not well-founded by the Lord Justice General of Scotland, who presided over a unanimous appellate panel of five Scottish High Court of Justiciary judges. Pursuant to the terms of arrangements jointly proposed by the United States and the United Kingdom—also incorporated into United Nations Security Council Resolution 1192—Megrahi was immediately removed from Kamp van Zeist in the Netherlands to a prison in Scotland to serve his life sentence.

THE DEPARTMENT'S PURSUIT OF JUSTICE

The Department of Justice has actively pursued justice in this matter for over 20 years. The Justice Department became involved in the investigation of the bombing of Pan Am Flight 103, and ultimately in Megrahi's prosecution, on December 21, 1988—the very day of the bombing. The Federal Bureau of Investigation (FBI), via its legal attaché in London, quickly established contact with the Scottish Police, and the following day—December 22—dispatched a team of U.S. agents to Lockerbie to begin what rapidly evolved into a joint investigation conducted by the Scottish police assigned to the Lockerbie Incident Control Center and FBI agents stationed in Lockerbie and Washington, DC.

The Scottish Police combed a crime scene that spanned 845 square miles and collected every possible item that might have come from the aircraft. The Scottish Police then sifted through this mass of debris for items of forensic significance. During this difficult time, the Scottish Police, and the residents of the town of Lockerbie, were also gracious hosts to the numerous American relatives of the victims who came to Lockerbie in the bombing's immediate aftermath.

For our part, in addition to the extensive investigation being conducted by the FBI in the United States in response to Scottish requests, the U.S. Attorney's Office for the District of Columbia and the Criminal Division of the Department of Justice each assigned experienced attorneys to provide legal guidance to the FBI, and to coordinate with their Scottish counterparts.

After many months of relentless, tireless effort by the FBI, DOJ prosecutors, and their Scottish counterparts, prosecutors in the Criminal Division and the D.C. U.S. Attorney's Office presented the case to a grand jury enpaneled in the U.S. District Court. On November 14, 1991, an indictment was unsealed charging Libyan Intelligence Service member Megrahi and Libyan national, Lamin Khalifah Fhimah, with the bombing of Pan Am Flight 103. That same day, the Lord Advocate of Scotland announced the filing of parallel charges in Scotland. The personal involvement, dedication, and compassion for the victims of the many career employees within the Justice Department who labored to hold to account all those who participated in this horrendous act has informed each action the Justice Department has taken in investigating and prosecuting this case and continues to the present day.

NONREPATRIATION TO LIBYA

Throughout this 20-plus year period, both the Department of Justice and the Department of State have consistently taken the position that Megrahi should serve the entirety of his life sentence in Scotland and not be transferred or allowed to return to Libya before its conclusion. This was one of the earliest issues raised by the United States in connection with the negotiations for a trial before a Scottish court in the Netherlands, and the United States continued to raise it following Megrahi's conviction and incarceration.

Mr. Chairman, in your letters of July 29, and September 22, 2010, you have asked that I discuss the 1998 agreement reached between the United States, the United Kingdom, and Libya that required individuals convicted in the Pan Am 103 bombing to serve their sentence in Scotland, and DOJ's communication with the Scottish Government about this agreement. As Principal Deputy Assistant Secretary McEldowney has testified, there was no binding agreement under international law that would have required Megrahi to serve his entire sentence in Scotland. Nonetheless, the Justice Department participated in extensive negotiations between the U.S. Department of State and the U.K. Foreign Office, which led to the joint United States-United Kingdom proposal for a trial under Scottish law and before a Scottish court sitting in the Netherlands. Following these negotiations, the United States took the position that there was a political understanding between the United States and the United Kingdom that Megrahi would serve the entirety of his sentence in Scotland, and would not be transferred, or allowed to return, to Libya before its conclusion.

Because the trial of Megrahi in a third country outside of the United States raised numerous questions, further negotiations between Justice Department representatives and the British Government were held in London in 1998 on matters such as the location of any convicted individual's service of sentence and the potential for future prisoner transfer agreements with Libya. With respect to service of sentence, the Department of Justice representatives maintained that any sentence must be served in Scotland. With respect to a prisoner transfer agreement, the Department's representatives learned that no prisoner transfer agreement then existed in 1998 between the United Kingdom and Libya, but that Prime Minister Tony Blair's incumbent government would not bind successor governments by giving the United States a commitment that the U.K. would not enter into a prisoner transfer agreement with Libya. Our representatives also learned that the Secretary of State for Scotland had the statutory power to release terminally ill prisoners on compassionate grounds (a power which would later transfer to the Scottish Executive under devolution) and that this discretion could not be fettered in advance by agreement. Nonetheless, the Department's representatives made it clear that we were unalterably opposed to the accused being returned to Libya, prior to the conclusion of his sentence, under any circumstances.

MEGRAHI'S RELEASE ON COMPASSIONATE GROUNDS

Seven years after Megrahi's 2001 conviction, in October of 2008, the Department of State was informed that Megrahi had been diagnosed with stage four prostate cancer. The Department of Justice also learned at that time that the Scottish administrative practice was to consider the release of terminally ill prisoners who have a prognosis of three months or less to live. In addition, the United Kingdom signed a Prisoner Transfer Agreement (PTA) with Libya in November 2008, negotiation of which had begun in 2007. This agreement was anticipated to come into effect sometime in 2009. The power to grant or deny an application under either the Prisoner Transfer Agreement, or for compassionate release, rested with the Scottish Executive. Although the United States had no say in actions undertaken by the Scottish Government in compliance with their own regulations in governing authorities regarding prisoner transfer or granting of compassionate release, the Department of Justice and the Department of State were once again adamant that Megrahi not be allowed to return to Libya.

In 2009, both Secretary of State Hillary Clinton and Attorney General Eric Holder personally conveyed to the Scottish Executive the U.S. Government's vehement opposition to Megrahi's transfer or release to Libya. To be sure, the Scottish Executive's discretion to release terminally ill prisoners on compassionate grounds was statutory and could therefore not be limited in advance by agreement. Nonetheless, the United States was equally adamant that if any such compassionate release took place, Megrahi must remain in Scotland, as the Department of State made clear in a demarche on the issue.

REACTION TO MEGRAHI'S RELEASE

As I have described today, the Department of Justice, at every opportunity, restated its opposition to Megrahi's release and return to Libya. After Megrahi was in fact released in August 2009, Attorney General Eric Holder condemned the decision as unjustified and publicly reiterated that it continued to be the Justice Department's position that Megrahi should have been required to serve the entire sentence handed down on him for his heinous crimes.

Similar views were stated by the FBI Director, Robert Mueller, who, in his former position as Assistant Attorney General for the Criminal Division, had led the inves-

tigation that resulted in Megrahi's U.S. indictment in 1991. On August 21, 2009—the day after Megrahi was released—Director Mueller wrote a letter to Scottish Justice Secretary Kenny MacAskill stating that the release is “as inexplicable as it is detrimental to the cause of justice” and “makes a mockery of the rule of law.” “[M]ost importantly,” Director Mueller poignantly continued in the letter, “your action makes a mockery of the grief of the families who lost their own on December 21, 1988.”

The sentiments expressed a year ago by Attorney General Holder and Director Mueller remain those of the Department today: The dedicated men and women at the Justice Department understand that it is impossible to measure what was lost when the lives of these 270 people were taken by this act of state-sponsored terrorism or the traumatic and sometimes debilitating grief of the families left behind. We know that this grief continues to this day and appreciate the outrage and anguish over Megrahi's release and return to Libya that the families continue to share with the Justice Department through our Office of Justice for Victims of Overseas Terrorism and the FBI's Office for Victim Assistance, among others. Please be assured that since that tragic day in December 1988, all of the FBI agents, victim-witness counselors, and prosecutors who have observed this grief have done everything in their power to provide whatever relief possible.

This concludes my prepared remarks, and I will try to answer any questions that the committee has for the Department of Justice.

Senator MENENDEZ. Thank you both very much for your testimony.

And let me join you, Mr. Swartz, in thanking all of the career members of the Justice Department and the victims' advocates who worked so diligently to bring the murderer to justice. So, we thank them and I'm sure all Americans thank them.

We'll do 8-minute rounds based on the number of members who are here at this point—and then we'll go to a second round, if we need it. The Chair will start with himself.

I want to get to something that I think you've both made rather clear, but I just want to not even allow a scintilla of doubt here. It has been suggested abroad, and some domestically, that there was some equivocation by the Government of the United States as to the release of al-Megrahi, even in the context of compassionate release. You both have testified that the United States opposed the release. Was there any equivocation of that position in any of the correspondence and communiqués going back and forth?

Ambassador.

Ambassador MCELDOWNEY. Thank you for asking that question, because I appreciate the opportunity to correct the record. There was no equivocation in any U.S. Government communication to any entity about our views that Megrahi should not, should never, be transferred to Libya, and that he should serve his full sentence to its entirety in Scotland. We stated that privately to government officials. We have stated that on numerous occasions publicly in press statements and in media interviews. So, I am troubled to hear that there are suggestions that there was anything less than absolute clarity about the U.S. Government position. And, as I say, I'm pleased to have the opportunity to clarify the record.

Senator MENENDEZ. Would that also be true for the Justice Department?

Mr. SWARTZ. Yes. Senator, let me also address this issue, because I think it is important to clarify the record.

As you noted at the outset, and as I mentioned in my opening statement, the United States Government always recognized that compassionate release was a possibility under Scottish law. We knew that from the original negotiations in 1988. And I believe

that some of the confusion that may arise here—some of the incorrect implications arise from the fact that discussions prior to Megrahi’s actual application for compassionate release, the United States Government, in communications, acknowledged that Scottish law did provide for this and that it could be considered by the Scots authorities at the appropriate time. That includes in communications from the State Department, in the Attorney General’s conversation with MacAskill. But, notwithstanding that, the issue always remained one of what would be done when he made his application for compassionate release and, beyond that, what compassionate release would mean. The understanding of the United States Government was that compassionate release, while unfortunate, would mean that he would essentially—Megrahi would essentially serve the remainder of his time in a hospice in Scotland—or a hospital—and would die outside of the prison, inside Scotland.

Obviously, it was never contemplated that compassionate release would be used as a vehicle to transfer Megrahi to Scotland. In fact, that would be nonsensical. The United States, having been adamant that Megrahi not be returned to Scotland as a prisoner, would hardly have signaled that it would be acceptable for him to be returned as a free—

Senator MENENDEZ. So, you acknowledged Scottish law, but also made it very clear that it was your expectation that al-Megrahi would not be allowed to be released outside of Scotland.

Mr. SWARTZ. Absolutely. I think that the record is clear in this regard. One need only look at Kenny MacAskill’s—Justice Minister MacAskill’s statement about the release itself, in which he points out that the United States, through Attorney General Holder and through Secretary Clinton, was adamant that he not be returned to Libya.

Senator MENENDEZ. In fact, Mr. Swartz, isn’t it the understanding of the United States that, if found guilty, the individuals would serve the entirety of their sentences inside of Scotland?

Mr. SWARTZ. Yes, Mr. Chairman, that was our understanding. We believed that we had an understanding that the individual would serve the entirety of his sentence. I should say that the United Kingdom was unwilling to commit to “the entirety of the sentence” being the explicit language, but we believe we had a political understanding that Megrahi would serve his sentence in Scotland.

Senator MENENDEZ. So, do you believe that al-Megrahi’s release on compassionate grounds breached the verbal commitments by the United Kingdom and the political understanding set forth in the 1998 Lockerbie justice agreement, that the suspects, if convicted, would serve their sentences fully?

Mr. SWARTZ. We believe that the understanding that we had, the political understanding, was breached by the return of Megrahi to Libya.

Senator MENENDEZ. Madam Ambassador, are you aware of Qaddafi’s August 2009 comments to the Herald Scotland that stated that the primary reason for concluding a Prisoner Transfer Agreement was to secure of the return of al-Megrahi to Libya? Specifically, he said that, “For the past 7 to 8 years, we have been trying very hard to transfer Mr. Megrahi to Libya to serve his

sentence here. And we have tried many times to sign the Prisoner Transfer Agreement without mentioning Mr. Megrahi. But, it is obvious we were targeting him." Are you familiar with that?

Ambassador MCELDOWNEY. I am, Senator. I'm familiar with that. I am also familiar with the desire and the efforts of the Scottish authorities to have Megrahi specifically mentioned in that Prisoner Transfer Agreement so that the potential for his transfer would have been excluded. There was also discussion between the Scottish and the U.K. authorities about the Scottish desire to have all future individuals associated with the Lockerbie bombing excluded from that agreement. In the course of the negotiations between the U.K. and Libya, as U.K. authorities have subsequently acknowledged, they were unable to secure that agreement, and so, they concluded the Prisoner Transfer Agreement in what they called the "standard form," which makes reference to no one.

Senator MENENDEZ. In your testimony, you cite the letter from British Foreign Secretary William Hague to Chairman Kerry in which he acknowledges that the Libyan regime had linked the conclusion of a broad Prisoner Transfer Agreement to ratification of the BP exploration agreement. It states, "During the several months of discussion in 2007 about Libyan opposition to the possible exclusion clause in the PTA," the Prisoner Transfer Agreement, "there were a number of conversations between BP and the then-United Kingdom Government. There were three discussions between BP and Mr. Jack Straw, or his office, between October and November 2007, and at least two contacts in the same period between BP and the Prime Minister Foreign Policy Advisor, and contacts with Her Majesty's Ambassador in Tripoli." The letter further recalls, "BP has been made aware, by the Libyans, that failure to agree to the Prisoner Transfer Agreement could have an impact on U.K. commercial interests, including the Libyan ratification of the BP exploration agreement."

Based on that statement alone, is there not reasonable suspicion that the United Kingdom's decision to conclude a Prisoner Transfer Agreement that did not explicitly exclude al-Megrahi was based primarily on the U.K.'s concern about its relations with Libya, commercial and otherwise?

Ambassador MCELDOWNEY. I think there a basis to assume that, and I think the statement by then-Foreign Minister Miliband also notes that there were political, security, and economic considerations that were involved in the U.K. decisionmaking.

Senator MENENDEZ. Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman, for your questions.

And thank you for your testimony.

I'd like to talk a little bit about the communications between the U.S. Government and the Scottish Government around the time that discussions were being made. You both testified that we had DOJ to Scottish Justice Minister MacAskill, and Secretary Clinton spoke. What were the responses received by both the DOJ and the State Department, verbally, on the issue?

Ambassador MCELDOWNEY. As you've stated, we were very clear and very categorical about our position, which has not changed, that Megrahi should serve out his complete sentence in Scotland.

It had been our understanding, throughout this period, that the Scottish Government agreed with us. Scottish First Minister Salmond has gone on record publicly, stating that he was opposed to the Prisoner Transfer Agreement, that he wanted an exclusion for Megrahi. And so, it was our expectation then, and through the course of the discussions that we held in the early part of the year, that that would continue to hold. It became clear to us over the course of the summer, and particularly in late summer, following the submission of Megrahi's request for compassionate transfer, that the Scottish authorities were considering that option. And that is why we reached out and again reiterated our opposition, but also, as my colleague has noted—also clarified, if they were determined to go forward despite our opposition, that they should, at a minimum, undertake the kind of comprehensive medical exam that I believe this committee is asking for, and ensure that Megrahi stayed within Scotland.

Mr. SWARTZ. Senator, if I may add to that, from the Department of Justice's perspective. As the Ambassador has noted, through the first half of 2009, the issue was one of prisoner transfer, since that—the agreement had been concluded, the Prisoner Transfer Agreement entered into force, and an application had been made by Libya for prisoner transfer at the beginning of May. The calls made by Attorney General Holder and by Secretary Clinton were part of a series of communications to the Scottish authorities, at all levels, on this issue. The Attorney General's call took place in June 26, following the application for prisoner transfer. He had a conversation with Justice Minister MacAskill, and that conversation, as reflected in Justice Minister MacAskill's own statement at the time of deciding the prisoner transfer issue, was clear, as he said that—Justice Minister MacAskill said that Attorney General Holder, “was adamant that assurance has been given to the United States Government that any person convicted would serve his sentence in Scotland. Many of the American families spoke of the comfort that they had placed upon these assurances over the past 10 years. That clear understanding was reiterated to me by the U.S. Secretary of State, Hillary Clinton.”

So, the conversation was then a direct and forceful one in which the Attorney General put forward the position that Megrahi should not be transferred back, under any circumstances. At that time, no application had been made by Megrahi for compassionate release. When that issue came up, the decision was that any discussions about that could be taking place—take place at a later time, when Scotland considered that issue under its own law.

Senator GILLIBRAND. One letter I'm looking at, that I want to discuss further, because it brings into question the content of the conversations and what assurances were made and whether they were provided in a way that I think was appropriate.

There's a letter here, dated 3 July 2009, to Mr. Burgess—George Burgess, deputy director, Criminal Justice Directorate, the Scottish Government. It's from the English—Middle East and North African Directorate, King Charles Street, London. And the author is not noted in a legible way, so I can't tell you who wrote the letter. But, it's a letter specifically—it says, “In your letter of 22 June, requesting information on the purpose and potential continuing effect of

the agreements between the U.K., the United Nations, and other governments prior to the surrender of al-Megrahi for trial in relation to the '98 Lockerbie bombing, specifically asked for advice on the extent to which the 1998 U.K.-U.S. letter to the United Nations Secretary General on the initiative for the trial"—blah, blah, blah—"creates a commitment in relation to the place of future imprisonment of the prisoner, al-Megrahi. You asked whether there are any additional commitments given to the United States Government in this regard."

And then, this author goes on to analyze what commitments were given to the U.S. Government. And the author concludes that our position, which you've both articulated, was very specifically given, "We have concluded that during discussions with the United States, both prior to and following the joint U.S.-U.K. letter to the U.N., the U.K. Government was committed to ensuring that the Lockerbie accused were tried before a Scottish court in the Netherlands and, if convicted, that they would serve out their sentences in Scotland, in accordance with Scots law. We stood by this line fully in our dealings with the United Nations, acting as intermediate to Libya. While at the time, we considered the Prisoner Transfer Agreement with Libya most likely, in view of our relations with Libya, the government of the day, in conjunction with the then-Lord Advocate, was keen to ensure that any political assurances given to the U.S. would not bind the hands of successor governments, we could not, at the time, rule out the possibility that our relations with Libya might one day change. The U.K. Government, consequently, did not give the U.S. an absolute commitment in relation to the future imprisonment of the Lockerbie accused."

So, that was his assessment. Is that consistent with the conversations that you're aware of, that no real commitment was given at the time?

And this letter goes on to say that, "Finally, you undertook to hold in confidence any information that we passed to you. I'm grateful for this assurance."

So, this letter was not intended to be made public. But, I would like to delve into, a little more, if the U.K. Government, indeed, was not specific in its assurances to us, or if they were, and they went back on their word. Because this really goes to the heart of our question: What happened between these conversations with the United States Government and when a decision was later made for compassionate release based on changes with the relationship with Libya? Because if it is based on changes with the relationship with Libya, I want to know if that change is economic in nature and based solely on the interest of drilling.

Mr. SWARTZ. Senator, I'll have the Ambassador address the latter part of that question.

But, yes, it is the case that, in the discussions that took place regarding the place of trial and how long the prisoner would serve, that the United Kingdom was unwilling to bind future governments, with regard to the possibility that there might a Prisoner Transfer Agreement. At the time, of course, that the discussions took place, in 1998, there was no Prisoner Transfer Agreement with Libya. And, as a result, there is no, as we've mentioned, inter-

nationally binding agreement in this regard, with regard to the service of the sentence.

Nonetheless, as was also made clear, and as we have reiterated on numerous occasions, there was a political understanding that Megrahi would serve his time in Scotland, the entirety of his sentence. And again, referring to Justice Minister MacAskill's statement—as he points out in that statement, while the U.K. had declined to provide a full explanation of the discussions, it, “appears to me that the American families and government either had an expectation or were led to believe that there would be no prisoner transfer and the sentence would be served in Scotland.”

Senator GILLIBRAND. Right.

Mr. SWARTZ. Thank you.

Senator GILLIBRAND. Well, this—the last letter I want to cite, to inform this discussion, is written 2 weeks later—July 17, 2009—from Lord Trefgarne, if that's how you pronounce it properly, to Kenny MacAskill. And he does raise the issue that this is going to create issues with regard to a relationship with U.K.-Libya relations. He says, “May I end by emphasizing that speed is of the essence; principally, of course, for humanitarian reasons, but also because of the shadow which may otherwise fall over the U.K.-Libya relations, and especially the interests of the LBB Scottish members and indeed others.” LBBC Scottish members, which is the—Libyan economic relationship working group, I think is—what does it stand for? LBB—the LBBC members. I'll get you the—what that stands for, but I think it's a economic group.

Ambassador MCELDOWNEY. Thank you very much for making reference to both those letters.

Let me first, and very briefly, touch on the July 3 letter and the caliber of the commitment between the United States and the United Kingdom—and just to reinforce.

There was—we sought, but did not conclude, a legally binding agreement in 1998. So, there was no legal impediment on the basis of a legally concluded agreement between us. But, it was our very clear understanding that we had a political commitment that Megrahi's transfer to Libya would not happen. We proceeded on the basis of the understanding that, while at some point in the future it might be a theoretical possibility, in practice it would never happen. And I think that is our understanding. That is what is clear in the 1998 documents. That is what is made clear in the 2009 letter that you made reference to from July 3, 2009.

And also, in the argumentation that we made over the course of these many years, we pointed out that it was not simply the commitment that we felt we had, the shared understanding that we felt we had, but also the gravity of the crime. Whether the commitment were there or not, the judgment about whether it was right to release him, given the circumstances of the crime, we argued, it was not.

Now, second, on the letter from—and I also apologize if I mispronounce the name—an individual, Trefgarne—the letter of July 17, 2009, which, I understand, is from a member of the British Parliament who is also the president of a business council that exists between Libya and the United Kingdom. I have seen that letter. I have also seen MacAskill's response to that letter in which Justice

Minister MacAskill says the decision rests with the Scottish authorities and the decision will be made solely on the basis of judicial concerns, without economic or political considerations.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Senator MENENDEZ. Let me go for a second round of questions and pick up right where you just finished.

It is clear that while that statement was made, the Scottish officials who have stated that they opposed a broad Prisoner Transfer Agreement that would apply to al-Megrahi, at the same time made a decision to release him on compassionate grounds, essentially accomplishing the same goal. Is that not true?

Ambassador MCELLOWNEY. That is—

Senator MENENDEZ. They knew that the Libyans wanted al-Megrahi. They knew about this whole debate upon how the Prisoner Transfer Agreement would be constructed. And they also knew they had the opportunity to release him on the compassionate grounds. So, there were clearly parallel tracks here.

Ambassador MCELLOWNEY. Senator, I would go further and say that, instead of achieving the same goal, it's even worse. Had Megrahi been transferred under the terms of the Prisoner Transfer Agreement, theoretically he would have been placed in a Libyan jail. Because he was granted compassionate release, he is a free man today.

Senator MENENDEZ. Now, did—

Ambassador MCELLOWNEY. And—please—

Senator MENENDEZ. I'm sorry. Please go. Go ahead.

Ambassador MCELLOWNEY. No, no.

Senator MENENDEZ. Finish your sentence.

Ambassador MCELLOWNEY. No, no. Please.

Senator MENENDEZ. In that respect, then, I look at the Scotland Act of 1998, which has been introduced into the record. Scotland, as a result of that act, has jurisdiction over matters involving criminal justice. However, the United Kingdom retains powers under foreign policy, immigration, and national security. Despite this legal fact, both the United Kingdom and Scotland publicly maintain that the decision to release al-Megrahi was solely in the hands of Scottish authorities.

However, if you look at the Scotland Act, the United Kingdom reserves the power, as I said, under foreign policy, national security, and even air travel.

So, let me refer specifically to part 2 of the act, entitled "Specific Reservations," Section Head B—Home Affairs, subsection B6, entitled "Immigration and Nationality." In it, the Scotland Act of 1998 notes that the United Kingdom retains authority over matters dealing with, "immigration, including asylum, and the status and capacity of persons in the United Kingdom who are not British citizens."

Later, in this same section, the act refers to reserve United Kingdom powers over "travel documents."

So, given the fact that al-Megrahi is not a British citizen, doesn't that mean that, even if the Scots decided to release him from a Scottish jail on compassionate release, that the United Kingdom retained power over his travel from Scotland to Libya?

Ambassador MCELLOWNEY. Senator, I am not an expert in U.K. constitutional law, and so, I believe the only people who could answer that question definitively are U.K. and Scottish attorneys.

It is my understanding—and this has been stated publicly by both Scottish and British authorities—that the authority for taking the decision on Megrahi's compassionate release rested with the Scottish authorities, based on devolution—the devolution arrangements that you've explained. It is also my understanding, as you've noted, that the United Kingdom—the government in London—retains responsibility for foreign policy. I could speculate about whether the United Kingdom could have closed the border or somehow prevented Megrahi's physical return to Libya, had they chosen to do so at the time. But, the government in London, the then-U.K. Government, said, "This is a decision that rests with the Scottish authorities. We will respect and observe their decision."

Senator MENENDEZ. Mr. Swartz, did the Justice Department note any of this, under the Scotland Act of 1998?

Mr. SWARTZ. Mr. Chairman, I, too, would have to say that the complexities of the devolution are ones that we are perhaps not expert to comment on, but would note, in addition to the Ambassador's point, of course, that the Prisoner Transfer Agreement, which was the impetus for the first consideration of Megrahi's transfer, was, of course, negotiated by the United Kingdom, under its foreign authorities—foreign policy authorities. The decision, as the Ambassador has pointed out, on compassionate release was, under devolution, one for the Scottish minister to make in the first instance, but, again, one that we believed would involve release within Scotland and, therefore, not pose the issues that you've raised regarding transfer of the individual after the release on compassionate release.

Senator MENENDEZ. Well, seems to me that unless somebody reads the act in a different way—it was a foreign policy decision, after the compassionate release, to allow al-Megrahi to physically leave Scotland. Certainly, travel circumstances are reserved to the United Kingdom. It seems to me that they could have respected the Scottish Government's decision to allow compassionate release, flawed as it may have been, and then, ultimately, still retained him by virtue of their powers. I don't think it takes a rocket scientist to figure it out.

Let me ask two final questions. You've said that you were not able to get a legally binding agreement, but had political understandings that were rather significant to our government at the time. Explain for the record why we could not conclude a legally binding agreement. Was our concern about how prosecution would take place, and the inability to come to an understanding?

Mr. SWARTZ. Mr. Chairman, the position taken by the United Kingdom was one that the current government could not bind future governments on these issues and, therefore, was not prepared to enter into a legally binding agreement, as opposed to an understanding that Megrahi would serve his sentence. Of course, at the time, the 1998 initiative of the United States and the United Kingdom was an attempt, as the Ambassador has pointed out, to overcome the intransigence of Libya, with regard to the trials of the two accused in connection with the Pan Am 103 bombing. And

we believed, at the Department of Justice, with our colleagues at the Department of State, the best way forward to secure justice in these circumstances. And again, as the Ambassador has noted, we believed that the nature and gravity of the crime would add to that political understanding, and would lead to the service of the entire sentence in Scotland, in accordance with Scottish law.

Senator MENENDEZ. So, in essence, it was our desire to seek a prosecution that had us make the determination, based on what the British were telling us, that this was the best way to move forward, in order to try to seek a prosecution. Is that a fair statement?

Mr. SWARTZ. Yes, Mr. Chairman, we believed that this was the best, most efficacious way of moving forward in obtaining U.N. support for this approach.

Senator MENENDEZ. And the final question, Ambassador. You both have said that it was a very strong, unequivocal position of the United States that al-Megrahi should not be released, certainly not be allowed to return to Libya. You both have said that in the absence of an absolutely legally binding commitment, there was a very clear political commitment and understanding between our respective countries that was further strengthened by the gravity of the crime committed here. However, that understanding didn't materialize as we thought—so, what political recourse do we have? Or, what does this teach us, in terms of a breach of trust, for the future?

Ambassador MCELDOWNEY. Senator, as you know, this administration expressed its deep regret and its outrage about the decision. Following the decision, we have called for Megrahi to be returned to Scotland to serve out his full sentence there. And we continue to do that.

We have also called on both the U.K. and the Scottish authorities to make all information available to ensure that we have full clarity about the circumstances that led up to this decision.

Those are efforts that we are committed to continuing, as we have been committed to continuing to ensure that justice is brought in this case, for over two decades.

Senator MENENDEZ. And finally, does the State Department believe that the desire for an independent inquiry conducted by the British Government, as Prime Minister Cameron suggested when he was the opposition leader, is something that would be desirable?

Ambassador MCELDOWNEY. As you know, President Obama has said he wants all relevant information brought to light. Prime Minister Cameron has committed to you, and has committed to the President, that he will undertake an additional examination of U.K. Government documents to see if such an inquiry is justified and should be conducted. We are waiting to hear from the U.K. about the results of that examination.

Senator MENENDEZ. Thank you both very much for your testimony—we appreciate it—and your time.

Mr. SWARTZ. Thank you, Senator.

Ambassador MCELDOWNEY. Thank you, Mr. Chairman.

Senator MENENDEZ. We'll excuse you.

Now let me now introduce our second panel of experts, who will be addressing the medical issues, as well as interaction between Libya and the United Kingdom.

I'd ask them to step forward as we introduce them. First, we have Dr. James L. Mohler. Currently, Dr. Mohler is the associate director and senior vice president for translational research at Roswell Park Cancer Institute in Buffalo, NY. Dr. Mohler is a highly accomplished, respected urologist who will provide insights into diagnosis and treatment options. He is chair of the National Comprehensive Cancer Network Guidelines Panel for Prostate Cancer. These guidelines are the gold standard for prostate cancer diagnosis and treatment. He has also taught and written extensively on the subject, and we want to thank him very much for being with us this morning.

Dr. Oliver Sartor is the second member of our panel, and a respected authority on issues surrounding the treatment of prostate cancer. He is Piltz professor of cancer research and the medical director of the departments of medicine and urology at Tulane Medical University—the Medical Center. For the last 20 years, Dr. Sartor's research and clinical interests have focused primarily on prostate cancer. He has published extensively on the subject, ranging from genetic studies on prostate cancer to clinical trials of experimental agents. He is past chairman of the Integration Panel for the Department of Defense's Medical Research Program in Prostate Cancer.

We thank you for coming today to the committee.

Our third panelist is Jeff D. Porter. Dr. Porter is a consultant on the Middle East and Africa, and has spent his career as an analyst with extensive experience in the international investigative community. He has lived and worked in the Middle East and in North Africa. He is an authority on Middle Eastern history and on Libya. He holds a B.A. in Islamic studies, an M.A. in Arabic, and a Ph.D. in Middle Eastern studies from New York University.

Dr. Porter, thank very much for joining us, as well.

As with the previous panel, I'd urge you all to summarize your statement to 5 minutes. Your full statements will be included in the record.

And with that, we'll start with Dr. Mohler.

STATEMENT OF DR. JAMES MOHLER, SENIOR VICE PRESIDENT FOR TRANSLATION RESEARCH, CHAIR, DEPARTMENT OF UROLOGY, ROSWELL PARK CANCER CENTER, BUFFALO, NY

Dr. MOHLER. Thank you, Mr. Chairman. I'm honored to come before you today to provide my expert opinion about the compassionate release granted to Mr. al-Megrahi in August 2005.

I believe at the time of his release he had not received proper treatment, nor did he have less than 3 months to live. In fact, I am not at all surprised that he appears alive and well today, almost 14 months later.

I'm qualified to offer these opinions because I'm a professor at three institutions. I'm a board-certified urologist. I have 23 years of experience and have treated over 2,000 men with prostate can-

cer. I've published over 200 peer-reviewed articles and a book on prostate cancer.

I'm chair of the Department of Urology at Roswell, which is one of our Nation's 40 NCI-designated comprehensive cancer centers. My particular expertise in the proper treatment of prostate cancer is reflected by my chairmanship of the National Comprehensive Cancer Network that you referred to.

What was Mr. al-Megrahi's status at the time of his release from prison? To understand this, we must review his prostate cancer diagnosis and treatment. According to the medical report released by Scottish authorities, Mr. al-Megrahi was diagnosed, September 2008, with prostate cancer that was incurable because it had spread to his bones. Fortunately for him, advanced prostate cancer can be put into remission in almost all men by starving the cancer of the male hormones it needs to grow and spread.

He responded to hormone treatment, but his response was short-lived, and he had a rapidly growing prostate cancer, and had some bone pain in July 2009. Up until that point, Mr. al-Megrahi's treatment was standard of care. But, then things became very confusing.

Scottish officials released him for compassionate reasons because he was believed to have 3 months or less to live. In my 23 years of experience caring for more than 2,000 prostate cancer patients and reading clinical studies that evaluated thousands of patients in similar conditions, there is no conceivable way a cancer specialist, or anyone familiar with the treatment of prostate cancer, could have given Mr. al-Megrahi a 3-month survival prognosis. Let me explain why.

A patient with prostate cancer with an accurate 3-month prognosis would have to be almost bedridden. But, Dr. Fraser's final medical report said that Mr. al-Megrahi's cancer did not restrict or remove his ability to carry out any particular task; and he walked down the stairs from his airplane, upon his arrival in Libya, as you saw in the video.

A patient with prostate cancer with an accurate 3-month prognosis would be given palliative or end-of-life care focused on pain management and making the patient as comfortable as possible. However, Scottish officials, doctors, and Mr. al-Megrahi himself reported, in July 2009, that, and I quote, "Different treatment options had been discussed and a new treatment had been embarked upon." This new treatment may have been a new hormone treatment or chemotherapy, but the effectiveness of either requires at least 6 weeks to evaluate, an evaluation that would not have been possible prior to his release.

So, if Mr. al-Megrahi had 3 months to live, why is he alive today? In order to understand why he's alive, we must learn what happens to men like him who receive chemotherapy. Docetaxel, an every-3-week outpatient chemotherapy treatment program, was shown to reduce pain and extend survival in two well-done studies reported in the *New England Journal of Medicine* in 2004. In fact, men just like Mr. al-Megrahi survived an average of 17 and 19.2 months from the start of chemotherapy in those two studies.

Today, and 1 year ago, when Mr. al-Megrahi was released, men have many other options, even if they fail hormone treatment and

fail chemotherapy. Their prostate cancer can be managed with three other forms of hormone treatment, another kind of chemotherapy, or radiation. Finally, he could benefit from any of three new classes of drugs, which include immunotherapy with Provenge, which has been in the news recently, better drugs that prevent the production of male hormones from weak hormones made from the adrenal glands, such as abiraterone, or a new small molecule that works better than the antiandrogen drug Mr. al-Megrahi received. In fact, abiraterone was discovered in London. And new evidence from a large trial in the United States suggests that it extends life in men like Mr. al-Megrahi.

So, if his cancer didn't respond well to hormone treatment, why is he alive today? Mr. al-Megrahi's failure of hormone treatment meant that his cancer was aggressive. As such, his prognosis was worse than others who responded more favorably to hormone treatment. However, his prostate cancer's rapid growth actually made a response to chemotherapy all the more likely, since chemotherapy works best against rapidly dividing cells. Therefore, I'm not at all surprised that he may be alive, and even well, more than 14 months after beginning chemotherapy or other treatments, such as abiraterone, for his rapidly growing prostate cancer.

I also believe that any physician with training and experience in prostate cancer would find a 3-month prognosis for a patient in Mr. al-Megrahi's condition difficult to believe and possibly even ridiculous.

In short, ladies and gentlemen, I am not the least bit surprised that Mr. al-Megrahi is alive today. And it should come as absolutely no surprise to the cancer specialists who cared for Mr. al-Megrahi, either.

I sincerely thank the committee for the opportunity to provide this statement.

[The prepared statement of Dr. Mohler follows:]

PREPARED STATEMENT OF JAMES L. MOHLER, M.D., SR. VICE PRESIDENT FOR TRANSLATION RESEARCH & CHAIR, DEPARTMENT OF UROLOGY, ROSWELL PARK CANCER CENTER, BUFFALO, NY

Mr. Chairman, distinguished members of the Foreign Relations Committee, it is my privilege to come before you today to provide my expert opinion about the "three months to live" prognosis Scottish physicians gave Abdelbaset Ali Mohamed al-Megrahi in August 2009.

Based on the medical report issued by the Scottish authorities, I believe that 3-month prognosis was medically unjustifiable. Any physician with any training or experience in treating prostate cancer would have known that a 3-month prognosis simply could not be made based on Mr. al-Megrahi's clinical situation at the time of diagnosis, the treatment received and the response to that treatment. Moreover, medical anomalies regarding his care—especially the use of chemotherapy—call into question how the 3-month prognosis was determined.

QUALIFICATIONS

I base my assessment today on a long history of training, practical experience, and in-depth research in the field of prostate cancer. I earned my medical degree from the Medical College of Georgia and competed residency training in Surgery and Urology at the University of Kentucky Medical Center and a research fellowship in Urologic Oncology at the Johns Hopkins University School of Medicine. I am licensed by New York and North Carolina, a Diplomat of the National Board of Medical Examiners and the American Board of Urology, and a Fellow of the American College of Surgeons.

My clinical practice focuses upon prostate cancer and robot-assisted laparoscopic surgery. My laboratory research focuses upon the role of the androgen receptor (the

protein that binds male hormones to activate growth) in racial differences in prostate cancer aggressiveness and prostate cancer recurrence during androgen deprivation therapy, hereafter called hormone treatment. I have authored or coauthored 206 publications and book chapters and a book "Androgen Action in Prostate Cancer." I serve on the editorial boards of The Prostate, Journal of the National Comprehensive Cancer Network, Therapeutic Advances in Urology, and Hormones and Cancer, and I review for several journals including Cancer, Cancer Research, Clinical Cancer Research, Journal of Clinical Oncology, Journal of Urology, and Urology.

I also am the Associate Director and Senior Vice President for Translational Research, Chair of the Department of Urology, Founder of the Prostate Program, and Professor of Oncology, at Roswell Park Cancer Institute, Professor of Urology at the University at Buffalo School of

Medicine and Biomedical Sciences, and Adjunct Professor of Surgery and Member, UNC-Lineberger Comprehensive Cancer Center at University of North Carolina.

I also bring to your attention that I am Chair of the National Comprehensive Cancer Network (NCCN) Guidelines Panel for Prostate Cancer, Vice-Chair of the Genito-Urinary Committee and Chair of the Genito-Urinary Surgery Subcommittee, Cancer and Leukemia Group B (CALGB), and Past-President of the Society for Basic Urologic Research. I am a member of the American Medical Association, American Association for the Advancement of Science, American Association for Cancer Research, American Urological Association and American College of Surgeons.

THE PROGNOSIS OF MR. AL-MEGRAHI

According to the medical report released by Scottish authorities, Mr. al-Megrahi was diagnosed September 2008 with poorly differentiated (Gleason grade 4+5=9 on a scale of 2 [best] to 10 [worst]), bone metastatic prostate cancer and he had a PSA of 363 ng/ml (normal < 2.5 ng/ml). In layman's terms, this means he was diagnosed with an incurable prostate cancer that was so advanced it had spread to his bones.

Fortunately for Mr. al-Megrahi, advanced prostate cancer can be put into remission in almost all men by starving the cancer of the male hormones it needs to grow and spread. He began hormone treatment, which is the standard treatment for advanced prostate cancer, in September or October 2008.

Mr. al-Megrahi had an initial response to this treatment, and his PSA dropped to 12.0 ng/ml. In other words, he responded but the failure of his PSA to fall to normal (<2.5 ng/ml) or undetectable (<0.2 ng/ml) predicted a remission that would be shorter than average.

Unfortunately for Mr. al-Megrahi, his cancer recurred in spite of hormone treatment in April 2009 when his PSA rose to 22.1 ng/ml and then 45.1 ng/ml. In short, the hormone treatment was failing and his PSA continued to rise, eventually reaching 208.8 July 2009. This sequence of PSA test values follows a PSA doubling time of approximately 2 months, which is consistent with a very rapidly growing prostate cancer. Up until this point, Mr. al-Megrahi's treatment was standard care.

Mr. al-Megrahi was released August 20, 2009, based on a medical prognosis that was determined on or before August 10, 2009. We know this because that was the date of the medical report, prepared by a Scottish physician named Dr. Andrew Fraser, which was the medical basis for Mr. al-Megrahi's release. Scottish officials based his compassionate release on the fact that, according to this report, he was believed to have 3 months or less to live. In my 23 years of experience caring for more than 2,000 prostate cancer patients and reading clinical studies that evaluated thousands of patients in similar conditions, there is no conceivable way a cancer specialist or anyone familiar with the treatment of prostate cancer could have given a 3-month prognosis based on the clinical situation and treatment described above. Let me explain why:

- A patient with prostate cancer with an accurate 3-month prognosis would have to be almost bedridden. Dr. Fraser noted in his final medical report that Mr. al-Megrahi's cancer "did not restrict or remove (his) ability to carry out any particular tasks." That is not the definition of a patient with prostate cancer who will die within 3 months. Also, as could be seen by the footage of his reception in Libya, he was ambulatory upon his arrival in Libya.
- We know that Scottish Government authorities, doctors, and Mr. al-Megrahi himself all claimed that Mr. al-Megrahi planned on taking courses of chemotherapy. However, a patient with prostate cancer with an accurate 3-month prognosis would have to be so ill that he would have been unable to receive a regimen of chemotherapy. A patient with prostate cancer with an accurate 3-month prognosis would instead be given palliative or end-of-life care focused on pain management and making the patient as comfortable as possible.

- Building on the two previous points, a prognosis of 3-months survival cannot be made until either all standard treatment options like chemotherapy have been attempted and evaluated or the patient has clear symptoms—like an inability to walk—that make it medically unreasonable to explore further treatment. In Mr. al-Megrahi’s case, they hadn’t even begun chemotherapy but intended to do so, which clearly indicates that he was physically able to undergo the next course of treatment and was not within 3 months of dying.

Contrary to documents published by the Scottish Government, I now understand that Mr. al-Megrahi received chemotherapy in Scotland just prior to his release. In July 2009, Dr. Andrew Fraser said that “different treatment options had been discussed, and a new treatment had been embarked upon.” This new treatment apparently was chemotherapy, as stated by George Burgess, the Scottish former Deputy Director for Criminal Law and Licensing, in a meeting with Senator Menendez’s staff. I’ll explore what that would mean for Mr. al-Megrahi’s life expectancy, but first I note that it takes at least 6 weeks to evaluate the effectiveness of chemotherapy after starting the treatment. If Mr. al-Megrahi began his chemotherapy in July 2009 after his hormone treatment failed, 6 weeks would not have passed prior to the final prognosis issued on or before August 10, 2009.

Still, let us explore what happens when patients just like Mr. al-Megrahi—a patient who had failed hormone treatments and who had similar symptoms—receive chemotherapy. There are published and readily known studies from 2004 that enrolled men with recurrent prostate cancer that proved that using the chemotherapy drug, docetaxel (Taxotere^T), an every 3-week outpatient regimen, reduced pain and extended survival. These were men who had failed hormone treatment but were well enough to undergo chemotherapy, just like Mr. al-Megrahi. These men survived an average of 17 or 19.2 months from the start of chemotherapy. Another study of 1,296 men on seven different studies, of whom some received chemotherapy and others received less effective treatment, showed their average lifespan was 13.3 months. Today, men have many other options even after they fail hormone treatment and chemotherapy. Their recurrent prostate cancer can be managed with other forms of hormone treatment, such as ketoconazole, prednisone, or DES patches. Mitoxantrone, a weaker chemotherapy, can reduce symptoms but, unlike docetaxel, does not extend survival, or painful bone metastases can be treated with radiation.

Finally, Mr. al-Megrahi may benefit from any of three classes of new drugs, (1) immunotherapy with sipuleucel-T (Provenge^T); (2) better drugs that block production of strong male hormones from weak male hormones, such as abiraterone, TAK-700, or VN124-1; or (3) a new small molecule, MDV3100, which blocks the androgen receptor better than the antiandrogen Mr. al-Megrahi received. Abiraterone was discovered in London and new evidence from a large trial in the United States suggests that it extends life in men like Mr. al-Megrahi.

In other words, Mr. al-Megrahi had many treatment options available to him in August 2009 that would have extended his life, on average, at least another year, and more likely 2 years or more.

In short, ladies and gentlemen, I am not the least bit surprised that Mr. al-Megrahi is alive. And it should come as absolutely no surprise to the cancer specialists who cared for Mr. al-Megrahi either.

CONCLUSIONS

Mr. al-Megrahi’s release on compassionate grounds appears to have erred in two fundamental ways. First, we now know that Mr. al-Megrahi received chemotherapy in Scotland, which Scottish cancer specialists would have known was going to extend his life on average 17 or 19.2 months, depending on which of these well done, large, well-known studies you wish to consider. Even if Mr. al-Megrahi didn’t receive chemotherapy in Scotland and he was just planning on receiving such, he would still live on average 17 or 19.2 months beyond the starting date when he did receive chemotherapy upon his return to Libya. Again, Scottish cancer specialists would have known this from medical research dating from 2004.

The second reason his release appears to have erred was because his health was inconsistent with a patient with an accurate prognosis of 3-months survival. For instance, he was not bed-ridden.

Some may speculate that Mr. al-Megrahi’s failure of hormone treatment meant that his cancer was particularly aggressive and therefore his prognosis was worse than others who responded more favorably to hormone treatment. That is true; many men have long remissions from hormone treatment but he didn’t. However, his prostate cancer’s rapid growth rate during hormone treatment paradoxically made a response to chemotherapy all the more likely, since chemotherapy works best against rapidly dividing cells. In short, patients with aggressive prostate cancer

like Mr. al-Megrahi respond better to chemotherapy than those patients with a less aggressive prostate cancer.

Therefore, I am not at all surprised that he may be alive more than 14 months after beginning chemotherapy and/or other treatments (such as abiraterone) for his rapidly growing, recurrent prostate cancer. I also believe that any physician with training and experience in prostate cancer would find a three-month prognosis for a patient in Mr. al-Megrahi's condition difficult to believe and possibly even ridiculous.

Thank you for this opportunity to address the inconsistencies apparent in Mr. al-Megrahi's compassionate release from prison.

References

1. Kelley AS, Meier DE. Palliative care—a shifting paradigm. *N Engl J Med* 2010; 363: 781–2.
2. Petrylak DP, Tangen CM, Hussain MH, Lara PN, Jr., Jones JA, Taplin ME, Burch PA, Berry D, Moinpour C, Kohli M, Benson MC, Small EJ, Raghavan D, Crawford ED. Docetaxel and estramustine compared with mitoxantrone and prednisone for advanced refractory prostate cancer. *N Engl J Med* 2004; 351: 1513–20.
3. Tannock IF, de Wit R, Berry WR, Horti J, Pluzanska A, Chi KN, Oudard S, Theodore C, James ND, Turesson I, Rosenthal MA, Eisenberger MA. Docetaxel plus prednisone or mitoxantrone plus prednisone for advanced prostate cancer. *N Engl J Med* 2004; 351: 1502–12.
4. Halabi S, Vogelzang NJ, Ou SS, Owzar K, Archer L, Small EJ. Progression-free survival as a predictor of overall survival in men with castrate-resistant prostate cancer. *J Clin Oncol* 2009; 27: 2766–71.
5. Kantoff PW, Higano CS, Shore ND, Berger ER, Small EJ, Penson DF, Redfern CH, Ferrari AC, Dreicer R, Sims RB, Xu Y, Frohlich MW, Schellhammer PF. Sipuleucel-T immunotherapy for castration-resistant prostate cancer. *N Engl J Med*; 363: 411–22.
6. Attard G, Reid AH, Yap TA, Raynaud F, Dowsett M, Settatree S, Barrett M, Parker C, Martins V, Folklerd E, Clark J, Cooper CS, Kaye SB, Dearnaley D, Lee G, de Bono JS. Phase I clinical trial of a selective inhibitor of CYP17, abiraterone acetate, confirms that castration-resistant prostate cancer commonly remains hormone driven. *J Clin Oncol* 2008; 26: 4563–71.
7. Dreicer R, Agus D, MacVicar G, MacLean D, Zhang T, Stadler W. Safety, pharmacokinetics, and efficacy of TAK-700 in castration-resistant, metastatic prostate cancer: A phase I/II, open-label study. Abstract Presentation 2010 Genitourinary Cancers Symposium: Chicago, IL.
8. Vasaitis T, Belosay A, Schayowitz A, Khandelwal A, Chopra P, Gediya LK, Guo Z, Fang HB, Njar VC, Brodie AM. Androgen receptor inactivation contributes to antitumor efficacy of 17 α -hydroxylase/17,20-lyase inhibitor 3 β -hydroxy-17-(1H-benzimidazole-1-yl)androsta-5,16-diene in prostate cancer. *Mol Cancer Ther* 2008; 7: 2348–57.
9. Tran C, Ouk S, Clegg NJ, Chen Y, Watson PA, Arora V, Wongvipat J, Smith-Jones PM, Yoo D, Kwon A, Wasielewska T, Welsbie D, Chen CD, Higano CS, Beer TM, Hung DT, Scher HI, Jung ME, Sawyers CL. Development of a second-generation antiandrogen for treatment of advanced prostate cancer. *Science* 2009; 324: 787–90.
10. Standard of care for recurrent prostate cancer—chemotherapy—can be found in the NCCN Prostate Cancer Guidelines (www.nccn.org/members; see PROS-7 System Therapy).
11. The survival of men with recurrent prostate cancer can be estimated using a nomogram (<https://www.calgbapps.org/Nomogram/CRPCv1p1.html>) that estimates 12, 18 and 24 months survival probability using 7 variables, which include presence of visceral disease, Gleason score, performance status, PSA at diagnosis, LDH, alkaline phosphatase and hemoglobin.

Senator MENENDEZ. Thank you very much, Doctor.
Dr. Sartor.

STATEMENT OF DR. OLIVER SARTOR, PILTZ PROFESSOR OF CANCER RESEARCH, DEPARTMENTS OF MEDICINE AND UROLOGY, TULANE MEDICAL SCHOOL, TULANE, LA

Dr. SARTOR. Thank you, Mr. Chairman, ladies and gentlemen.

I'm pleased today to offer my clinical opinion regarding the medical prognosis of Mr. al-Megrahi. And I think we really need to go

back to July 2009 and look no further than a report issued by the Scottish Government. They actually did bring in some specialists. What the specialists were not able to conclude is that he had a prognosis of 3 months or less. And the fact is, they were not willing to say that. And I believe, based on my many years of clinical experience and expertise, that medical science would not support a prognosis of 3 months or less.

Mr. name is Dr. Oliver Sartor. I have a long list of qualifications, some of which you read. I'm the medical director and the head of the Prostate Cancer Program at Tulane University Medical Center. And I've focused on patients with advanced prostate cancer for over 20 years. I've treated thousands of patients, and I've published over 100 peer-reviewed articles, as well as many book chapters, as well.

As you are well aware, when he was released for his, "compassionate reasons," in August 2009, it was stated his life expectancy was less than 3 months. He was subsequently seen on international television. And you showed that video today. And I'll say, based on those videos alone, I would conclude that the prognosis of less than 3 months was inaccurate.

For patients who are going to die within 3 months, they're typically bed-bound. Prostate cancer is a tough disease when it spreads to the bone and causes weight loss. It causes severe problems with nutrition and causes inanition, causes pain. This individual walked down, was greeted in the crowds. I saw the original video—just to let you know—when I saw it I was a bit befuddled. Back when he was released—yes, I saw it on television, not just in the video here—and I was thinking, "Why is this man being released?" It was not at all clear to me then, nor now, why he was given a prognosis of 3 months or less.

When we go back to part of the medical report released by the Scottish Government, Dr. Andrew Fraser noted, in August 10, 2009, just 10 days before his release, Mr. al-Megrahi's condition did not restrict or remove his ability to carry out any particular task. This is very important, because we look at prognosis, in part, based on performance status; and given his lack of restrictions, I simply don't understand the "3 months or less."

Beyond the images that I've alluded to, I also had a chance to review some of his medical data. When he was diagnosed, he was treated appropriately. He was given hormonal therapy and given standard therapy. But, after initially responding to that treatment, it subsequently began to grow. That's not unexpected. Hormonal therapy does not cure these type of patients. But, at the time that his hormonal therapy was beginning to fail—and Dr. Mohler referred to this—the variety of known effective therapies—approved by the FDA, I might add, and approved in treatment in various European countries, as well—about using chemotherapy for these patients—and it's known to prolong survival. And if we quote the original data—and I'll go back to the FDA for a second—it was either 18.9 or 19.2 months of expected survival using chemotherapy for patients such as Mr. al-Megrahi. And clearly, if he was a candidate for getting chemotherapy at that time—and there were discussions that that was the case—we would not even anticipate a less-than-3-month prognosis, and, fact is, we would have anticipated much more.

Now, based on this information, it just becomes very difficult for me to understand why he was given that 3-month-or-less prognosis. He was considered to be a candidate for chemotherapy, chemotherapy showed to lead to a 19-month survival. By the way, a more recent study suggests even longer. And why they were saying the 3 months, again, befuddles me.

So, in summarizing, I just don't think that this was a reasonable prognosis. I think that the cancer specialist who evaluated his case actually recognized that, because they would not state that he had 3 months or less in his prognosis. And furthermore—I take this position independently, based on my experience through treating thousands of prostate cancer patients—the fact that he remains alive today is not at all unexpected and leads me, quite frankly, to be very skeptical of the process whereby he was determined to have this prognosis.

Thank you very much, Mr. Chairman.

[The prepared statement of Dr. Sartor follows:]

PREPARED STATEMENT OF DR. OLIVER SARTOR, PLITZ PROFESSOR OF CANCER RESEARCH, DEPARTMENTS OF MEDICINE AND UROLOGY, TULANE MEDICAL SCHOOL, TULANE, LA

Mr. Chairman, ladies and gentlemen, I am pleased to be here today to offer my clinical opinion regarding the medical prognosis given to Mr. Abdelbasset al-Megrahi. When considering whether a 3-month prognosis was a reasonable estimate for Mr. al-Megrahi in of July 2009, I look no further than the medical report issued by the Scottish Government. In this report it is explicitly stated that no specialist was willing to say whether or not the prognosis was more or less than 3 months. I believe that they knew—as I know from my many years of clinical practice and knowledge of research—that medical science would not support a prognosis of less than 3 months to live.

My name is Dr. Oliver Sartor and I am the Medical Director of the Tulane Cancer Center in New Orleans, LA. I have focused my career on patients with advanced prostate cancer for over 20 years and have published over 100 articles on prostate cancer in the scientific literature.

In 1990, I was appointed to a Senior Investigator position at the National Cancer Institute in Bethesda, MD, and became an integral part of the team focusing on advanced prostate cancer. Since that time I have been on faculty at various medical schools where I have lectured about and continue to research prostate cancer. During my career, I have seen literally thousands of patients with prostate cancer.

As you are aware, Mr. al-Megrahi was released from a Scottish prison, supposedly for compassionate reasons, in August 2009. At that time, it was publically stated that his life expectancy was less than 3 months and that then justified his release. Mr. al-Megrahi was subsequently seen on international television being greeted as a hero on his return to Libya. I personally watched those television broadcasts and, based on that alone, I knew that he was not near death. Let me explain.

Patients who have less than 3 months to live, as Mr. al-Megrahi was said to be by the Scottish Government, are typically unable to walk without assistance. Indeed, they are often bed-ridden or close to bed-ridden because of the pain, weakness, and weight loss that occurs as consequence of advanced cancer. A man who walks down a steep flight of stairs off a plane on his own accord, then mingles and greets a crowd, certainly does not fit the description of someone on the verge of death from prostate cancer.

I want to emphasize the point by highlighting a part of the medical report released by the Scottish Government. Dr. Andrew Fraser noted that, as of August 10, 2009, just 10 days before he was released, that Mr. al-Megrahi's condition did not restrict or remove his ability to carry out any particular tasks. This is a very important piece of medical data to consider. It implies that he had a reasonable performance status which is an important prognostic factor. Thus it is clear based on this statement that Mr. al-Megrahi's prostate cancer had not advanced to the terminal stages that require true palliative care, that is to say, he was not at the stage where he would best be served by receiving only pain management in a hospice setting to provide comfort during his final few months of life.

Beyond the images of Mr. al-Megrahi walking down a staircase, I have had the chance to review the patient's available medical data and consider the research available to the specialists treating Mr. al-Megrahi. Here are the highlights of what I think you should know:

- Mr. al-Megrahi had advanced prostate cancer. When he was diagnosed in September 2008, the patient had a highly elevated PSA, which stands for "prostate-specific antigen." A high reading often means prostate cancer but additional tests must be conducted. Those tests were done in Mr. al-Megrahi's case and they confirmed cancer was present.
- Next, Mr. al-Megrahi received "hormone therapy," which is standard first-line care for patients with his condition. Prostate cancer typically regresses when testosterone lowering therapies are administered.
- After initially responding to the treatment, Mr. al-Megrahi's cancer later began to fail "hormone treatment." This failure was initially manifested only by a rising PSA. While this is unfortunate, it is to be expected.
- In July 2009, Mr. al-Megrahi, Scottish officials, and doctors rightly began discussing chemotherapy. This is a standard, "next step" treatment after hormone failure. Though the patient had failed hormonal therapy, and the cancer had spread to his lymph nodes and bone, he had not yet been treated with therapies that are established in the field of prostate cancer. Specifically, he had yet to undergo chemotherapy with docetaxel, which has been shown in large trials to be able to extend life in patients such as Mr. al-Megrahi with advanced cancers that have failed initial hormonal therapy.

Over the past 10 years, various therapies have been shown to prolong survival. In patients similar to Mr. al-Megrahi, treated with modern chemotherapy, the median survival is either 18.9 or 19.2 months (depending on whether the initial or final study report is cited).

Based on the information available to me concerning Mr. al-Megrahi's condition, there is little doubt that in July and August 2009, he would have been a candidate for chemotherapy. That is why Scottish officials, doctors, and Mr. al-Megrahi himself were not only aware of but actively exploring chemotherapy for the patient. They would have known that it would have the potential capacity to extend his life.

Let me then emphasize the point: patients like Mr. al-Megrahi who failed hormone treatment and started chemotherapy have a median survival time of either 18.9 to 19.2 months. This is quite distinct from the three months that was cited prior to his release.

To summarize, Mr. Chairman, I again come back to not my words or clinical assessment but to those of the Scottish cancer experts who oversaw the treatment of Mr. al-Megrahi. They were not willing to say that a 3-month prognosis was reasonable. I have shared with you today the reasons why I believe in July 2009—just weeks before the release of Mr. al-Megrahi—the cancer specialists held that view. I believe that they knew that medical science would not support such a prognosis. I take this position based on my experience in treating advanced prostate cancer over the past two decades, and based on published data on patients treated for advanced prostate cancer. data that was well published in the medical literature and available to be referenced by those treating Mr. al-Megrahi.

The fact that he remains alive today is not at all unexpected to me and leads me to be very skeptical of the process whereby his prognosis was determined at the time of his release from prison.

I am happy to answer any questions at this time.

Senator MENENDEZ. Thank you very much, Doctor.
Dr. Porter.

**STATEMENT OF DR. GEOFF PORTER, CONSULTANT,
NEW YORK, NY**

Dr. PORTER. Mr. Chairman and distinguished members of the Senate Foreign Relations Committee, I'd like to thank you for the opportunity to testify today regarding Libya, its energy sector, its relations with the U.K. and with Scotland.

The release of Abdelbasset al-Megrahi was obviously an important foreign policy goal for the Libyan Government and is something that they had pursued for quite some time. And obviously,

the issue of Megrabi's incarceration in Scotland colored relations between London and Tripoli.

For the last decade, I've been studying North Africa; and for the last 6 years, I've been a specialist focusing on political risks in North Africa and the Middle East, with a focus on Libya. More recently, I've begun working with an investigative firm that deals with fraud and corruption investigations overseas.

My analysis is objective, it's agnostic, it's factual-based, and is impartial.

Thank you.

It's clear, from the very outset, that al-Megrabi's release was important—an important foreign policy goal for the Libyan Government.

First, the Libyan Government never recognized the legitimacy of The Hague ruling, which led to al-Megrabi's incarceration, nor did it recognize the ongoing Scottish incarceration of al-Megrabi.

Second, Libyan leader Col. Muammar Qaddafi felt as if he hadn't been duly compensated for his renunciation of weapons of mass destruction in 2004, and he felt as if perhaps of his renunciation of weapons of mass destruction should have wiped his checkered history of international affairs clean.

Third, al-Megrabi comes from an important tribe, the Megarha. One of the ways in which Colonel Qaddafi retains power in Libya is through the management of tribal politics. Securing al-Megrabi's release was critical for Qaddafi's ability to maintain the Megarha's tribal—the Megarha tribe's support for his leadership. And having secured his release guaranteed that the Megarha would continue to support al-Qaddafi.

And last, 2009 was the 40th anniversary of Qaddafi's revolution in Libya, and Megrabi's release guaranteed a celebratory and symbolic event suitable for marking the occasion.

Libya has a long history of pressuring foreign firms in order to achieve its foreign policy objectives. I'll just limit myself to a couple of examples here, for the sake of time. But, what's clear is that foreign companies doing business in Libya are very exposed to political risks.

For example, in 2008, two employees of the Swiss EP&C firm ABB were detained and arrested in retaliation for the arrest in Geneva of one of Qaddafi's sons, Hannibal Qaddafi. Hannibal Qaddafi returned to Tripoli and the Swiss employees remained in custody in Tripoli.

In 2009, the Canadian firm Petro-Canada saw its Libyan oil production cut in half following criticism from the Canadian Prime Minister of the celebration that marked al-Megrabi's return to Tripoli.

In 2010, representatives of the United States oil firms doing business in Tripoli were brought in before the Libyan Government and chastised, following comments from the U.S. State Department criticizing Qaddafi's call for jihad against Switzerland.

So, it's clear from these limited examples—and there are many more—that doing business in Libya is fraught with political risks, and that Libya uses the presence of foreign firms in order to achieve its foreign policy objectives.

So, given the government's willingness to squeeze foreign firms in order to achieve its foreign policy goals, and the importance of securing al-Megrahi's release, his release from Scottish incarceration removed one element of political risk for U.K. firms doing business in Libya. That said, Libya is a sovereign state and the U.K. is a sovereign state, and each determines its own foreign policy, and each tries to secure its own security interests, as well as its own economic interests. While U.K. firms may have benefited from al-Megrahi's release, there is no evidence that they caused his release, to the best of my knowledge.

U.K. companies do not represent the largest block of foreign firms operating in Libya. There are also French, Italian, and German firms that have extensive presences there. But, U.K. firms and U.K. investments in Libya are very high-profile, including very large and costly oil and gas exploration commitments. It's important to note that these investments from U.K. firms in the Libyan oil and gas sector predated al-Megrahi's release by at least 2 years. It's likely that al-Megrahi's ongoing incarceration in Scotland could have jeopardized U.K. businesses in Tripoli and, at the very least, his ongoing incarceration would have posed a threat to their continuing ability to do business there. His release reduced that risk, but I have not seen evidence that proves that the risk posed to U.K. firms caused his release.

Thank you very much, and I look forward to your questions.
[The prepared statement of Dr. Porter follows:]

PREPARED STATEMENT OF GEOFF D. PORTER, PH.D., NEW YORK, NY

Mr. Chairman, distinguished members of the Foreign Relations Committee, I would like to thank you for the opportunity to testify about Libya, its government, its energy sector, and its relationship with the United Kingdom and Scotland. The release of Abdelbaset al-Megrahi was an important foreign policy goal of the Libyan Government and, as such, there is little doubt that this issue had a broader impact on the relationship between Libya and the United Kingdom.

QUALIFICATIONS

For the last decade I have been studying North African political developments. I have a Ph.D. in Middle Eastern Studies, with a primary focus on North Africa. After leaving academia I worked in a consultant capacity for 6 years analyzing political risk for companies doing business in Middle Eastern and African countries, including Libya. My assessment of political risks in Libya is apolitical and based entirely on analysis of factual evidence.

THE FOREIGN POLICY RELATIONSHIP BETWEEN THE U.K. AND LIBYA REVOLVES AROUND OIL AND GAS EXPLORATION

The U.K.'s relationship with Libya is predominantly related to commercial interests, and oil and gas exploration in particular.

Beginning in 2003, and perhaps earlier, British officials began a series of meetings with Libyan officials to discuss how Libya might reestablish its relationship with the international community. These discussions revolved around Libya giving up its Weapons of Mass Destruction Program and from the Libyan perspective, how Libya might again attract European and U.S. investment to revive its declining oil production. Representatives of the U.S. Government have been reported to be in some of these meetings.

In March 2004 Prime Minister Tony Blair arrived in Libya to discuss a "new relationship" with Libyan leader Col. Muammar Qadhafi after it was announced that Libya would abandon its WMD program and would commit to further compensation for the families of the victims of the Pan Am 103 Lockerbie bombing. The same day, Prime Minister Blair announced that Royal Dutch Shell, a publically traded company that is 60 percent Dutch and 40 percent British, would sign a \$513 million

gas exploration contract with Libya. Later in May 2007, Tony Blair visited Tripoli and announced a \$900 million oil and gas exploration contract for BP.

These public appearances of the British Prime Minister to announce oil and gas exploration deals underscore the role that hydrocarbon sector plays in U.K.-Libyan relations.

BP AND SHELL OIL DEALS IN LIBYA

Libyan oil reserves were critically important for global oil and gas companies during the period 2004–08. Global oil demand was rising, as were prices, which rose from below \$30/barrel in September 2003 to more than \$147/barrel in July 2008. At the same time access to oil reserves had become severely constrained and Libya stood out as a potentially very profitable oil play. Libya had abundant reserves of high quality crude that was both cheap to extract and close to global markets. When international sanctions were dropped in 2004, international oil companies including those from the United States, the European Union, Russia, China, Japan, and India jockeyed to gain access to the Libyan oil patch.

International oil companies that signed oil and gas exploration deals in Libya can be put into three categories. The first group is comprised of those companies that reclaimed dormant leases that they had been forced to abandon because of U.S. and international sanctions in the 1980s. The Oasis group (Amerada Hess, ConocoPhillips, and Marathon Oil) falls into this category. The second group consists of companies that participated in four open bid rounds to lease tracts of previously unexplored areas. In this process, companies submitted bids and those with the bids most favorable to Libya won the right to explore the area on those terms. Winning bids were based on percentage of oil allocated to the Libyan National Oil Corporation (NOC), signing bonus, and development program. Bid rounds generally lead to terms that are favorable to the states that are organizing them, which is why they are a popular method of leasing oil and gas acreage to foreign firms, but the terms that the first three of Libya's four rounds produced were exceptionally onerous for foreign firms.

The third category is comprised of companies that negotiated bilateral deals with Libya to explore new areas for development. Many in the industry felt that while the bid rounds offered the advantage of a clear timetable for awarding acreage, bilateral negotiations with the NOC would yield better terms, even if discussions took longer. For its part, the NOC made clear from 2004 onward that it prioritized the bid round framework, but was also open to direct negotiations with oil and gas companies.

Only three companies in this time period negotiated bilateral exploration deals with Libya: BP, Royal Dutch Shell, and ExxonMobil. In 2005, Royal Dutch Shell struck a deal valued at approximately \$513 million to explore oil and natural gas in an area spanning 7,000 square miles. In 2007, BP signed a deal in Libya valued at \$900 million for access to offshore acreage. BP heralded its deal as the largest single exploration commitment ever signed by the company. BP was awarded 18.955 percent production share, with the NOC taking 77.7 percent and the Libyan Investment Authority (LIA) taking the remaining 3.345 percent.¹ While some companies that won acreage through the bid round framework received less than 10 percent production shares, the average production share in the first bid round was 14.5 percent. ExxonMobil's production share for its acreage was 22.3 percent, whereas India's ONGC won a 28 percent production share. Although ExxonMobil's production share from its bilateral negotiations was not made public, the company committed to a 5-year work program of 4,000km of 2D and 2,000km of 3D seismic analysis and at least one deep water well. ExxonMobil also committed to a training program for Libyan petroleum sector workers and broader support for Libyan education. Many factors influence how production shares are divided among a project's stakeholders, including the scope of the project, capital expenditures, the prospectivity of the acreage, and the complexity of the overall project. Nonetheless, BP and Shell, both countries with close ties to the British Government, were able to secure large deals for unexplored areas outside the bid round process.

THE IMPORTANCE OF ABDELBASSET AL-MEGRAHI TO LIBYA

Gaining the release of Abdelbasset al-Megrahi was a central foreign policy goal of the Libyan Government for multiple reasons. First, Libya had consistently asserted that al-Megrahi was innocent of the crimes of which he was accused. Given numerous public statements from Libyan officials declaring al-Megrahi's innocence, it was politically impossible for the government to reverse its position and acknowl-

¹"BP Libya Deal Details Set," International Oil Daily, May 31, 2007.

edge the legitimacy of his conviction at The Hague or his incarceration in Scottish prison.

Second, al-Megrahi's tribal ties made his release important for the political viability of Qadhafi's continued leadership in Libya. One of the ways in which Qadhafi has managed to maintain support in Libya for 40 years is through tribal alliances. Qadhafi himself comes from the Qadhafda tribe, whereas al-Megrahi comes from the al-Megarha tribe, which has historically played an important political role in Libya. Securing al-Megrahi's release was critical for ensuring the Megarha's continued support of Qadhafi's leadership.

In addition, Qadhafi has expressed on numerous occasions that his country made tremendous sacrifices when it abandoned its WMD programs in 2003, but those sacrifices had not been sufficiently recognized by the international community, nor had Libya been duly compensated for them. It is possible that Qadhafi expected Libya's checkered record in international affairs to be wiped clean after renouncing WMD and he thought that al-Megrahi's conviction for his role in the Lockerbie bombing should be part of that.

Last, Libya was marking the 40th year of Qadhafi's revolution in 2009 and the government wanted politically potent symbols to distinguish the event. Al-Megrahi's release would symbolize the Qadhafi family's enduring commitment to Libya's citizens and the restoration of Libya's role on the international stage.

LIBYA USES COMMERCIAL TIES TO ACHIEVE FOREIGN POLICY AIMS

It is clear that Libya does not maintain a clear distinction between the government and the marketplace and the state often uses access to Libyan markets and natural resources in order to achieve foreign policy objectives. In other words it is willing to put pressure on oil companies in order to achieve its political aims.

BP indicated to the U.K. Government that al-Megrahi's ongoing incarceration would pose challenges to BP's ability to continue to do business in Libya after it was awarded acreage. Like every company that does business in Libya, BP was well aware of the country's political risks. Al-Megrahi's release would reduce BP's exposure to political risk.

BP, perhaps more than other companies, was aware of the risks of doing business in Libya. After all, in 1971, Libya nationalized BP's assets in the country in response to developments in U.K. foreign policy. A diplomatic row between Britain and Libya occurred on November 29 and 30 of 1971, when the U.K. was set to withdraw its forces and grant independence to the sparsely inhabited Persian Gulf islands of Abu Musa, Greater Tunb, and Lesser Tunb. Then U.K.-friendly Iran, which had agreed to jointly administer Abu Musa with Sharjah (now a part of the UAE) unexpectedly seized and occupied Greater and Lesser Tunb.² Shortly after, on December 7, 1971, the Libyan Government nationalized "all the interests and properties of BP in the Hunt/BP deed of concession"³ announcing that, "it had nationalized the assets of the British Petroleum Exploration (Libya) Ltd. in retaliation for Great Britain's failure to prevent Iranian occupation of Arab islands in the Persian Gulf."⁴

Other foreign oil companies, including Occidental Petroleum, Exxon, Mobil, Shell, and Texaco⁵ were able to broker deals with Libya that kept them operational during a period of nationalizations and pullouts between 1973 and 1986, when all American oil interests were finally prevented from doing business in Libya.⁶

Libya's nationalization of BP's assets was not done out of economic interest for Libya, but was clearly a punitive measure directed toward the Government of Britain and its greatest financial asset, British Petroleum. In 1973, Libya nationalized the assets of a further nine foreign companies in order to express its opposition to U.S. foreign policy positions at the time.

This approach has resumed since sanctions against Libya were dropped in 2004 and international oil companies returned. In 2009, Petro-Canada's Suncor lost 50 percent of its oil production in retaliation for Canada's criticism of al-Megrahi's release and the celebratory reception he received upon returning to Tripoli. Canadian Prime Minister Stephen Harper made public comments that he was displeased with

²"UAE renews calls for talks on disputed islands," *Arabian Business*, May 23, 2009.

³Robert B. von Mehren and P. Nicholas Kourides, "International Arbitrations between States and Foreign Private Parties: The Libyan Nationalization Cases," *The American Society of International Law*, July, 1981, 483.

⁴Winthrop G. Haight, "Libyan Nationalization of British Petroleum Company Assets," *International Lawyer*, Vol. 6, No. 3, 1972, 541.

⁵Andrew Carvely, "Libya: International Relations and Political Purposes," *International Journal* Vol. 28, No. 4, Autumn, 1973, 711.

⁶Library of Congress, <http://countrystudies.us/libya/60.htm> (August, 2009).

the triumphant return that al-Megrahi received in Libya. Petro-Canada promptly saw its daily production halved, from 90,000bpd to 45,000bpd, at the order of the Libyan Government, according to Petro-Canada. Qadhafi also cancelled plans to visit Canada after the Prime Minister made his remarks. Libya said that Petro-Canada's production was halved to meet OPEC quotas, but no other oil company had its production disrupted.⁷

More recently, in 2010, representatives of U.S. oil companies operating in Libya were chastised by the Libyan Government after Qadhafi objected to comments from the U.S. State Department. A State Department spokesman commented on Qadhafi's call for jihad against Switzerland for arresting his son Hannibal. Qadhafi viewed these comments as personally offensive and summoned the executives of U.S. oil companies doing business in Libya to warn them that their businesses were in jeopardy over this row.

In other instances, the punitive aspect of Libya's manipulation of the commercial environment is starker. In 2008, Libya detained Swiss businessmen in Libya, including the employees of Nestle and ABB, in retaliation for the arrest of Hannibal Qadhafi, one of Colonel Qadhafi's sons, in Geneva. Libya ultimately arrested and detained two ABB employees for almost 2 years—even after Hannibal Qadhafi had returned to Tripoli.

Based upon these and other instances, it is clear that Libya is willing to pressure companies doing business in Libya to attempt to achieve foreign policy aims.

Given these incidents, BP would clearly want to minimize its exposure to political risk in Libya and its vulnerability to Qadhafi's mercurial decisionmaking. One of the ways to do so was to urge the U.K. Government to ratify a pending Prisoner Transfer Agreement between Libya and the United Kingdom. Al-Megrahi was the only prisoner that was contemplated to be transferred under the agreement. Al-Megrahi's transfer would remove one thorn in the side of U.K.-Libya relations and reduce the likelihood that BP would fall victim to Qadhafi's history of strong-arming foreign firms.

Other U.K. interests may have been wary of the political risks that al-Megrahi's ongoing incarceration posed and would have benefited either directly or indirectly from his release. Following the dismantling of the international sanctions regime against Libya in 2004, many European countries, including Italy, France, and Russia, were competing to sell Libya new arms and defense technology. Al-Megrahi's release lowered one obstacle for U.K. arms manufacturers interested in competing with their European counterparts for their share of the Libyan market. In 2008, the U.K. Government approved arms sales to Libya worth \$18 million.⁸ In May 2010, Britain's General Dynamics U.K. announced a \$165 million deal to supply a tactical communications system to elite units of the Libyan army.⁹

The U.K. may have also been interested in attracting investments from Libya's sovereign wealth fund, the Libyan Investment Authority, which at the time had a market cap of US\$60mn. (The fund now has approximately US\$80mn to invest.) Were al-Megrahi to have remained in prison, it is unlikely that the LIA would have pursued U.K. investments.

Libya also made clear to Scottish authorities that bilateral trade and Mr. al-Megrahi's release were linked. In October 2008, the Libyan Chargé d'Affaires Omar Jelban wrote to Scottish First Minister Alex Salmond and said that he wanted to discuss two issues: the medical condition of Mr. al-Megrahi and enhancing current trade links between Libya and Scotland.

In short, Libya is a country where diplomatic relations disproportionately impact foreign direct investment. Where relations are favorable, companies reap the benefits. When relations sour, companies bear the brunt of retaliatory measures.

QATARI INVESTMENT IN SCOTLAND AND THE AL-MEGRAHI CONNECTION

Not only was Libya interested in al-Megrahi's return—Qatar was as well. According to publicly released documents by Scotland, in June 2009, Scottish First Minister Alex Salmond received a delegation of Qatari officials. The meeting was focused on discussing Qatari interest in investing in Scotland and, notably, the Scottish banking system. Also expressed at the meeting was Qatar's interest in al-Megrahi's release. The Qatari delegation explained that Qatar currently held the

⁷ <http://www.allbusiness.com/company-activities-management/company-structures/13233739-1.html>.

⁸ "Freeing Libyan bomber 'boosted arms talks.'" UPI, July 16, 2010 http://www.upi.com/Business_News/Security-Industry/2010/07/16/Freeing-Libyan-bomber-boosted-arms-talks/UPI-24251279298306/.

⁹ "Libya Purchases Gear from General Dynamics U.K." Andrew Chuter, DefenseNews, May 8, 2010 <http://www.defensenews.com/story.php?i=3518749>.

chair of the Arab League, and that Libya had raised the issue of al-Megrahi's release during the League's last summit.

CONCLUSION

To conclude, the return of al-Megrahi was of great importance to Libya, and like it has in the past, it was willing to use its commercial leverage with the U.K. to ensure his release.

Senator MENENDEZ. Well, thank you all for your testimony.

We'll start a first round of 7 minutes, and then we'll have another round, if necessary.

In my first round, I'm going to focus on our two medical experts, and then I'll come back to you, Dr. Porter, in our second round.

Dr. Mohler, I think you've made it rather clear that it was not medically possible for a 3-months-to-live prognosis, in August 2009, to be given to Mr. al-Megrahi. Is that fair to say?

Dr. MOHLER. Yes.

Senator MENENDEZ. You saw the video earlier in the presentation and alluded to it. The fact that Mr. al-Megrahi could walk down a flight of stairs unassisted, does that tell you anything about his medical condition or the accuracy of a 3-month prognosis?

Dr. MOHLER. I want everyone here to understand that prostate cancer is a very slow-growing disease, and so we talk, in prognosis, in terms of months and often even years. It would be very difficult to give a prognosis of 3 months to a prostate cancer patient who was able to negotiate a flight of stairs. Not knowing what his laboratory situation or organ status was, you don't know if there was any silent threat to his life posed, except that you can presume, by his still being alive 14 months later, that there was not.

The biggest problem here is that the Scottish authorities in the prisons were still exploring treatments and, in fact, indicate in their records that in July they added a new hormone treatment, and in July they considered chemotherapy. And according to George Burgess, he received a first dose of chemotherapy.

So, one would never give a 3-month prognosis to anyone where you were still trying new active treatments that are likely to extend survival by 18 months or more.

Senator MENENDEZ. So, if someone were to be considered for, or in receipt of, chemotherapy treatment, it wouldn't be administered in the last 3 months of their lives.

Dr. MOHLER. Right. Chemotherapy is still rather toxic. And to withstand a full regimen of Taxotere, which usually consists of every-3-week treatments for a minimum of six treatments, one does have to have a good, what we call, "performance status." And the patient clearly had that, as evidenced by his ability to negotiate stairs, which is one of the many criteria we use, but is a very good indicator of ability to withstand a regimen of chemotherapy. He appeared to be a candidate for chemotherapy.

Senator MENENDEZ. Doctor, what physical condition would be expected of a patient with advanced prostate cancer and an accurate 3-months prognosis?

Dr. MOHLER. They would usually be unable to walk unassisted. They certainly wouldn't be able to climb stairs. They would most often be bedridden. They could be suffering renal failure from obstruction of the kidneys by the cancer. They definitely would have lost their appetite and be losing weight. They would look like a

prison camp survivor. They would be anemic. They could have liver failure. They would have had to have decided that they would not seek any more active life-prolonging treatment. They would be someone who is in pain, and their physicians would be seeking to alleviate that pain and would not be exploring any other types of active treatment.

Senator MENENDEZ. And finally, based upon your review of the medical records that the Scottish Government released, did his physical condition match that of someone with an accurate 3-months prognosis?

Dr. MOHLER. No. As a matter of fact, the final report, by Andrew Fraser, that led to his release actually indicates that he shouldn't have been released. And I quote, "Concluding specialist's view is that, in the absence of a good response to treatment, survival could be in the order of months, and no longer many months." So, Dr. Fraser said that, without any additional treatment, survival could be months, but they were pursuing active treatment, therefore negating the possibility of a 3-month prognosis.

Senator MENENDEZ. Thank you.

Dr. Sartor, according to the Scottish Government's own medical report, the four cancer and urology specialists that the Scottish consulted did not agree with the 3-month prognosis. Is that correct?

Dr. SARTOR. That's correct.

Senator MENENDEZ. And why do you believe that none of the specialists who were consulted would offer a 3-month prognosis, based on the information you have?

Dr. SARTOR. Well, certainly, first of all, they probably had a little more information than we do today, because I've not had his full medical records to review, including laboratories that could be important. But, some of these specialists, I know, are extremely well qualified, particularly the one from Royal Marston in London, and I think that he knew that this was not a patient with a 3-month prognosis, and he would not agree. So, when we get this panel of experts—not the prison doctors, but the real experts in the disease—they did not agree with the less-than-3-month prognosis.

[An additional written clarification to Senator Menendez's question follows:]

Cancer specialists usually seek to determine when a terminally ill patient has 6 months to live because this is a well accepted criteria for hospice care. The focus upon a 3-month prognosis appears to derive from a desire to establish grounds for "compassionate release" under Scottish penal law. In order to achieve "compassionate release," Andrew Fraser, Director of Healthcare for the Scottish Prison Service, could have reconsulted the specialists who saw Mr. al-Megrahi in August 2008, who included Dr. Zak Latif, a urologist from Paisley, Dr. Richard Jones, a medical oncologist from Glasgow, Dr. Geoffrey Orr, the diagnosing urologist and Dr. Graham Howard, a medical oncologist from Edinburgh. He appears instead to have relied upon a family practitioner and two of three physicians who were hired by the government of Libya. He disregarded one of the paid consultants and an unnamed urologist who examined Mr. al-Megrahi. Dr. Jonathon Waxman (paid by Libya), a professor from London, felt that Mr. al-Megrahi "did not have long to live" but he was unwilling to provide a 3-month prognosis. An additional opinion from an unnamed consulting urologist was referenced in Mr. al-Megrahi's personal application for compassionate release dated July 2009. The urologist examined Mr. al-Megrahi June 25, 2009, and determined Mr. al-Megrahi's demise would occur "before the end of the year" (prognosis 6 months). A prognosis of 3 months was provided by Mr. al-Megrahi's prison physician and two physicians paid by the Libyan government. A 3-month prognosis was provided by Dr. Ibrahim Sharif, a medical oncologist at Tripoli Medical Center, who has assumed Mr. al-Megrahi's care in Libya. A 3-month

prognosis was also assigned by Dr. Karol Sikora, Professor, Medical Director of Cancer Partners U.K. and Dean of the Buckingham Business School, in London. Finally, a 3-month prognosis was provided by Dr. Peter Kay, Mr. al-Megrahi's personal physician while imprisoned. Dr. Kay is a part-time prison doctor and part-time family practitioner who had been in family practice since 2006. He had no special training in oncology, in general or prostate cancer, specifically. In conclusion, "compassionate release" required the unusual medical designation of a 3-month prognosis that was obtained from 3 physicians who include a young family practitioner with no prostate cancer experience, the Dean of the Buckingham Business School, and Mr. al-Megrahi's medical oncologist from Libya.

Senator MENENDEZ. Now, it seems, based upon the medical report and from the discussions that my staff has had with the Scottish Government—it appears that the 3-month prognosis came down to a doctor, Peter Kay, who is a general practitioner. Dr. Fraser, who you referred to, is also a general practitioner. While I have great respect for general practitioners, we'll enter into the record a description of Dr. Kay and Dr. Fraser's medical qualifications from the British National Health Service.

Without objection, it is so ordered.

[EDITOR'S NOTE.—The information referred to can be found, and will be maintained, in the permanent record of the committee.]

Senator MENENDEZ. In your experience, would one rely on a general practitioner to provide a prognosis for a patient with advanced prostate cancer like Mr. al-Megrahi?

Dr. SARTOR. No. It's a rapidly evolving field. There are new therapies, which Dr. Mohler alluded to. There's a science behind it. There's nomograms that we can utilize. It's not really within the purview of the general practitioner. This is a specialist's decision.

Senator MENENDEZ. Does it sound sensible to you that after having four cancer specialists say that a 3-month prognosis for Mr. al-Megrahi was not something that they could agree to, the Scottish authorities relied on the opinion of two general practitioners?

Dr. SARTOR. No, you know, I concluded my statement by saying I was skeptical of the process. And that's one of the reasons why. It's just not a process that I think that we would endorse here today.

Senator MENENDEZ. Thank you very much.

Senator BARRASSO.

Senator BARRASSO. Thank you very much, Mr. Chairman.

I have a full statement. And, with permission, I'd like to have it included in the record.

Senator MENENDEZ. Without objection.

Senator BARRASSO. Thank you.

[The prepared statement of Senator Barrasso follows:]

PREPARED STATEMENT OF JOHN BARRASSO, U.S. SENATOR FROM WYOMING

On December 21, 1988, Pan Am Flight 103 exploded over Lockerbie, Scotland killing 270 individuals.

In January 2001, al-Megrahi was convicted for his role in the bombing Pan Am Flight 103.

In August of last year, Americans were shocked and outraged over the release of al-Megrahi by the Scottish Government.

Al-Megrahi is a convicted terrorist who took the lives of 189 American citizens. At a minimum, he deserves to spend the rest of his life behind bars. But instead of justice, this terrorist was released and received a hero's welcome upon his return home to Libya.

The world was told that he was released on compassionate grounds because he had terminal cancer giving him only 3 months to live. Over a year has passed since

his release. It is clear that something went seriously wrong. He is still alive and living a life of luxury with his family in Libya.

The American people, especially families of those who lost loved ones in Pan Am Flight 103, deserve answers and the real facts.

I am pleased that the committee is holding this hearing today and I look forward to the testimony of the witnesses.

Senator BARRASSO. For the physicians, the urologists, is there any area in which you disagree?

Dr. SARTOR. I'm not aware.

Senator BARRASSO. Do you have way to—with what you know now—and I don't know if you've seen an recent videos of this man—do you have any idea or any thoughts on what his potential lifespan is at this time?

Dr. SARTOR. I don't really have very much information, but I understand that he is actually still able to walk. And, you know, the fact that he's alive today, 13 months after he was given this, "3-month prognosis," you know, clearly indicates that that initial prognosis was wrong. But, today he might even be living more than 3 months. It's hard for me to evaluate, in all honesty.

Senator BARRASSO. Dr. Mohler, any idea.

Dr. MOHLER. I would agree with that. I think, now that we know that patients getting chemotherapy for symptomatic advanced prostate cancer live beyond the 17- to 19.2-month survivals that were used for FDA approval of Taxotere—probably closer to 2 years. So, if I were going to make a wager, I'd wager on another year.

But, I have to remind everyone that, contrary to what many believe about physicians, we cannot predict the future. And I think, here, that we have a couple of family practitioners who were guilty of predicting the future.

Senator BARRASSO. Yes.

Well, Mr. Chairman, I just want to concur. You know, I'd—we all have a great respect for family physicians that—you know, I practiced medicine for 25 years. I actually have a letter from Tulane, accepting me into the urology program in 1977, so I have great respect for that institution and where you train. And I looked at this, like you did, and said, "There's something very wrong with this whole thing."

So, I guess the question to Mr. Porter—you know, from a historical—what really happened here? Are we looking at a "Mission Impossible" script, where they said, "Hey, how do we get this guy, you know, out of Scotland and back to his home? And if we can—let's get him out on a medical and try to fool some folks"? What do you think happened here?

Dr. PORTER. At the risk of speculating—I don't have any direct insight into what really took place between the U.K. Government, the Scottish Government, and the Libyan Government—but, as I said in my opening comments, it's clear that securing al-Megrahi's release was a top priority for the government in Tripoli. And it's also clear that they were going—they were willing to go to great lengths, including potentially strong-arming U.K. firms in Libya in order to secure his release. And that appears to be what has transpired.

Now, I certainly don't have any of the expertise that my copanelists have regarding his health or his life expectancy at this point, but, as you've rightfully point out, he is alive and well—or, he is

alive; I'm not sure how well he is—and it appears as if Libya has achieved one of its fundamental foreign policy objectives in this instance.

Senator BARRASSO. Thank you.

And, Mr. Chairman, I just wanted to commend you for your efforts to continue focusing on this. And we wanted to have hearings during the summer—weren't able to do that—and then you had additional research done, folks on your team going out to make sure that we would get this additional information. And I want to thank you for bringing these medical experts and specialists here today.

Thank you, Mr. Chairman.

Senator MENENDEZ. Thank you, Senator Barrasso. And thank you for attending, and your insights, as well.

I have a set of questions I'd like to ask Dr. Porter. And I appreciate you being here, as well, in your own right.

You said that—in your testimony—and I just want to make sure I have the highlights here; and correct me if any of this is wrong—that Mr. al-Megrahi was important to Qaddafi because of a series of issues. No. 1, that Mr. al-Megrahi's family tribe was politically important, for domestic purposes, to Qaddafi. Is that correct?

Dr. PORTER. That's correct.

Senator MENENDEZ. And that that would placate hard-liners who might challenge Qaddafi.

Dr. PORTER. That's correct.

Senator MENENDEZ. And that they also believe that al-Megrahi was innocent.

Dr. PORTER. Yes.

Senator MENENDEZ. And that he felt that he gave up too—this is Qaddafi, now—gave up too much in the 2003 weapons of mass destruction deal, and he wanted something more for what he gave up. Is that a fair statement?

Dr. PORTER. That's exactly right. He stated so, himself.

Senator MENENDEZ. Now, when Libya gave up its weapons of mass destruction program and attempted to normalize relationships with the rest, what role did the British Government play?

Dr. PORTER. When Libya began to search for ways to return to the international community and come out of international isolation, one of the first governments that the Libyan Government approached was the U.K. Government. And I believe that Tripoli saw London as a fair and potentially beneficial interlocutor for Libya on the international stage. And so, the initial discussions for Libya's return to the international community began between London and Tripoli, and then incorporated the broader international community.

Senator MENENDEZ. And didn't the British accelerate their normalization with Libya at a much faster rate, particularly in commercial ties?

Dr. PORTER. At that—at what time?

Senator MENENDEZ. At—when they were beginning to—when the Libyans went to them to say, you know, “We want to stop our isolation, we want to be integrated,” didn't the British, at the beginning of that process, move, for example, much quicker than the United States and other governments did?

Dr. PORTER. What—while Libya was returning to the international community, the world was experiencing a spike in oil demand and in oil prices. And one of the things that Libya presents to the global community is abundant high-quality, cheap oil. And so, as the U.K. was beginning to enter into negotiations and discussions with the Libyan Government, many countries, the U.K. included, were also interested in trying to get into Libya in order to secure those oil assets.

Senator MENENDEZ. And, Dr. Porter, as the United Kingdom was playing an important role in normalizing Libyan relations with the West, this also allowed them to establish trade relations with Libya quickly and pretty aggressively. It resulted in two lucrative deals for oil companies with close ties to the United Kingdom, a \$513 million oil and gas exploration deal for Shell, and a \$900 million oil and gas deal for BP. Both of these deals were announced by the British Prime Minister in Tripoli. Besides being quite large deals, were they different from other deals struck by Western oil companies in Libya?

Dr. PORTER. Yes, sir.

Senator MENENDEZ. How so?

Dr. PORTER. Since 2004, Libya had conducted four open bid rounds for oil and gas acreage. Normally what happens, an oil company assesses the acreage that they would like to acquire in a given country, they prepare a bid, those bids are submitted and then opened publicly, and the awards are allocated, and then signed some time after the awards have been allocated.

Neither BP nor Shell participated in bid rounds or—I should restate that—neither BP nor Shell acquired acreage through bid rounds. Instead, they acquired their acreage through direct bilateral negotiations with the Libyan National Oil Corporation, the NOC. One of the things that distinguishes the bilateral negotiations from bid-round format is, bilateral negotiations tend to result in better terms for the international oil company—in this case, BP and Shell—than the terms that would have resulted from participating in the bid rounds.

Now, one of the things that also distinguishes bilateral negotiations is, the types of acreage or projects that BP and Shell were pursuing were big, they were complex, they were technically difficult, they were very capital-intensive. One of the things that allowed BP and Shell to pursue these negotiations was that they had the expertise and they also had the capital in order to guarantee or convince the Libyan National Oil Corporation that they would be able to manage the projects that they had undertaken.

It's also worth noting that all of the only other types of companies that had the capital to be able to pursue these projects, or had the technical expertise to pursue the projects that BP and Shell were ultimately awarded, were already in Libya. These tend to be referred to as the "super majors." The last two super majors to enter Libya were BP and Shell.

Senator MENENDEZ. And didn't—isn't it also true that the—their negotiations allowed for a greater company share?

Dr. PORTER. The negotiations allowed for a company share of the production of oil that was about 4 percentage points higher than

the average production share award to IOCs that had won acreage through the bid-round format.

Senator MENENDEZ. OK. Let me—so, you cited a couple of examples. In—isn't—going back in an earlier example, in 1971, Libya nationalized all of BP's assets over a foreign policy dispute. Isn't that true?

Dr. PORTER. That's correct.

Senator MENENDEZ. It was a dispute involving the United Kingdom supporting Iran taking control of several islands, as a matter of fact. Should, then—BP clearly would have known full well that Libya uses its assets, its natural resources in oil, in the pursuit of foreign policy.

Dr. PORTER. That's entirely true. BP, as well as any other foreign firm that does business in Libya, is well aware of the political risks. But, as you rightfully point out, BP itself had been the subject of a particular political grievance that the Libyans had with the U.K. Government in 1971 with the Iranian occupation of several islands in the Persian Gulf.

Senator MENENDEZ. So, it's fair to say that the Libyans have a modus operandi of using commercial rewards or recriminations in order to achieve their foreign policy goals.

Dr. PORTER. Yes. I don't think that requires any further elaboration.

Senator MENENDEZ. Yes. And given the fact that al-Megrahi's release was such a high priority for Libya, and the fact that the Libyan Government routinely leans on oil companies to either reward and/or seek recrimination to achieve its foreign policy aims, would it be surprising if BP did not feel pressured to help Libya gain al-Megrahi's release?

Dr. PORTER. I can't comment on that, because I don't know what the BP executives were feeling or thinking. But, what you can say is that I'm sure that BP was well aware of the risks that al-Megrahi's ongoing incarceration in Scotland posed to the viability of BP's business opportunities in Libya.

Senator MENENDEZ. Well, it certainly would have been in the pattern, at least from the Libyan Government's actions up to and including that date, that they were not reticent to go ahead and use their economic power through their resource to oil to try to make companies make an argument back in their country in support of their ultimate view.

Dr. PORTER. Yes.

Senator MENENDEZ. Yes. Finally, there are commercial connections of significance between the United Kingdom and Libya that goes beyond energy. Do you have any sense of that from your studies about some—for example, the recent arms deals between the United Kingdom and Libya?

Dr. PORTER. Yes, you're entirely right, that the U.K. commercial interests in Tripoli expand well beyond oil and gas, including arms deals and infrastructure. I think one illustrative statistic is that the volume—or, the dollar amount of arms deals between the United Kingdom and Tripoli increased tenfold from 2008 to 2010. So, there's clearly a dramatic increase in the dollar amount of arms that the U.K. sold to Tripoli after—or, in the runup to, and then after al-Megrahi's release.

Senator MENENDEZ. Thank you.

Thank you all for your testimony and your insights from your respective expertise. The committee appreciates it.

We are going to leave the record open for 10 days to give members of the committee an opportunity to submit additional questions. And so, if you receive any, we'd ask your cooperation in submitting your answers in writing as soon as possible.

And, with that, we'll excuse the three of you. Thank you very much. Your testimony's been very helpful.

Let me close—and seeing no other members at this time—in summary, I think what we've learned in this hearing only raises additional questions. Frankly, as I said at the outset, I am deeply troubled by the lack of cooperation we've received in getting to all of the facts. I'm also incredibly troubled that the executives at BP chose not to send a single witness to appear before this committee or answer any of our questions. Seems to me that you would want to do so in the interests of transparency, of making your case, whatever that case might be. And so, the absence speaks loudly.

But, what we have learned today is that there were clear anomalies in Mr. al-Megrahi's care, starting with my staff's interviews in Scotland. We heard a contradiction to the previously released medical reports that al-Megrahi did actually receive chemotherapy. And today we've heard testimony that medical professionals familiar with cancer diagnosis and treatment would not give chemotherapy to a dying man.

And even if we settled for the story that the Scottish Government told in their public documents, that he did not receive chemotherapy, the medical experts again said that, giving the medical record and the video we all saw today of him walking up and down the stairs to catch his victory flight home, was not a video of a dying man. Given the flawed process used to certify his release, I guess there shouldn't be much surprise that he is still alive today. What is a surprise is that he is free and living in Libya.

We've learned that the diagnosing physician was Dr. Peter Kay, a general practitioner, not an oncologist, or, as the Scottish Government now maintains, it was Dr. Andrew Fraser. Neither doctor has any specialization in cancer diagnosis or treatment.

I have to say, I'm very disappointed that we cannot get the Scottish Government to answer questions about the issue of chemotherapy or provide any more detailed medical information to clarify a series of discrepancies in their medical-release decision. Based on what we have learned today and in our research leading up to this hearing, my view is that the Scottish Government's 3-month release process was, in this case, incredibly flawed, if not purposely manipulated.

We've learned, as I said in my opening statement, that the terms of the 1998 Lockerbie justice agreement have clearly been violated. That agreement specifically states that any prison sentences were to be served in the United Kingdom. It clearly states, "For the purpose of the trial, we shall not seek their transfer to any jurisdiction other than the Scottish court sitting in the Netherlands. If found guilty, the two accused will serve their sentence in the United Kingdom." The language of the agreement could not be any clearer. And I think that the testimony of both the State Department and

the Department of Justice could not be any clearer, as well, in terms of what that understanding meant.

And finally, we heard from an expert today who testified about commercial concerns that could have influenced Scottish and U.K. thinking on the merits of Mr. al-Megrahi's release. The United Kingdom had significant commercial interests at stake in their relationship with Libya—oil and gas exploration, in particular—and Libya does not always maintain a clear distinction between the government and the marketplace.

We heard that BP was well aware of the political risks of doing business with Libya and that the return of Mr. al-Megrahi was of great importance to the Libyan Government, which was more than willing to use its commercial leverage with the United Kingdom to ensure his release.

And we heard the reasons why both Scotland and the United Kingdom Governments could have wanted Mr. al-Megrahi removed from U.K. soil.

We also heard that there are a variety of other commercial motivations, and were reminded of how the Libyan Government uses commercial interests to either penalize or reward companies and nations, based on its foreign policy goals.

The unanswered questions we are left with are deeply troubling. Why was the 1998 Lockerbie justice agreement broken? How does the Scottish Government explain the chemotherapy issue? And why was the advice of four of their own cancer specialists ignored? Why was Mr. al-Megrahi released at all, given what we do know? And, most troubling of all, who, if anyone, stood to benefit from his release?

I'm disappointed, as I've said, that we have not heard from any officials at BP as to their involvement in their case. Public reports clearly have. Sir Mark Allen, a former MI6 British intelligence officer being hired by BP to make the case to the United Kingdom of the importance of the Prisoner Transfer Agreement, and we would have heard what else in those conversations took place. In my view, if BP is not willing to cooperate with this committee to get to the bottom of why a convicted terrorist was prematurely released, in violation of our agreement with the British and Scottish Governments, then perhaps we should make BP pay all claims owed to families, fishermen, and everyone affected by the gulf disaster, before any new drilling permits are issued to them. It's certainly an option that I'll be exploring.

There are simply too many unanswered questions. I fear that we have not heard the truth about Mr. al-Megrahi's clinical care. And we call, once again, for the full release of his medical file.

We also believe that the absence of truth leads to uncertainty, and this uncertainty only creates more and more questions and a darker and darker cloud. Given what we have heard today, given the facts that have come out, I would hope that the British Government will open their own investigations into what led to the release of a terrorist who killed 270 innocent people.

Prime Minister David Cameron said, then, as a opposition leader, before he was Prime Minister, very clearly, something that I fully agree with him. He said, "I don't think we can now trust the government to get to the bottom of this, so I think the time has come

for an independent inquiry, led by a former permanent secretary or former judge, to find out what more papers need to be released so we can see what the British Government was doing in our name." I believe he was right then, and I believe it would be right now.

So, our efforts here have come not quite to a full close. I can assure the families that we will be issuing a report that will include many other facts, based on our findings, and I hope that that report will put this gross miscarriage of justice in perspective for the world to see. I hope it will clearly send a message that we do not expect convicted terrorists to be set free. It not only undermines our very efforts in terms of national security and our collective fight against global terrorism, but sends all the wrong messages to those who would be terrorists. And I think it is incredibly important for us, in issuing that report, to create a greater opportunity for public pressure in support of an independent inquiry by the British Government to mount. As we made clear to the Prime Minister in a meeting with him when he last visited the United States, we want to get to the truth. And getting to the truth will set us free.

With that, seeing no other members, this hearing is adjourned.
[Whereupon, at 12:25 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

LIST OF "VICTIMS OF PAN AM 103 BOMBING" SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Pan Am Flight 103 Crew

Avonye, Nichole Elizabeth, flight attendant, 44 years, born 05.05.44, Croissy-Sur-Seine, France, French
Avritt, Jerry Don, flight engineer, 46 years, born 30.07.42, Westminster, California, American
Berti, Noelle Lydie, flight attendant, 40 years, born 24.12.47, Paris, France, American
Engstrom, Siv Ulla, flight attendant, 51 years, born 21.09.37, Berkshire, England, Swedish
Franklin, Stacie Denise, flight attendant, 20 years, born 16.02.68, San Diego, California, American
Garrett, Paul Isaac, flight attendant, 41 years, born 16.11.47, Napa, California, American
Kuehne, Elke Etha, flight attendant, 43 years, born 17.03.45, Hanover, Germany, German
Larracochea, Maria Nieves, flight attendant, 39 years, born 03.03.49, Madrid, Spain, Spanish
MacQuarrie, James Bruce, captain, 55 years, born 30.09.33, Kensington, New Hampshire, American
McAlolooy, Lilibeth Tobila, flight attendant, 27 years, born 02.11.61, Kelsterback, Germany, American
Murphy, Mary Geraldine, purser, 51 years, born 14.05.37, Middlesex, England, British
Reina, Jocelyn, flight attendant, 26 years, born 26.05.62, Isleworth, England, American
Royal, Myra Josephine, flight attendant, 30 years, born 20.12.58, London, England, American
Skabo, Irja Syhnove, flight attendant, 38 years, born 03.07.50, Oslo, Norway, American
Velimirovich, Milutin, chief purser, 35 years, born 14.10.53, Middlesex, England, American
Wagner, Raymond Ronald, first officer, 52 years, born 18.01.36, Pennington, New Jersey, American

Pan Am Flight 103 Passengers

Ahern, John Michael Gerard, bond broker, 26 years, born 16.04.62, Rockville Center, New York, American, Seat Number 30C

Aicher, Sarah Margaret, playwright, 29 years, born 09.02.59, London, England, American, Seat Number 46C

Akerstrom, John David, 34 years, born 20.05.54, Medina, Ohio, American, Seat Number 25A

Alexander, Ronald Ely, businessman, 46 years, born 15.07.42, New York, New York, Swiss, seat number 42C

Ammerman, Thomas Joseph, marketing manager, 36 years, born 06.08.52, Old Tappan, New Jersey, American, seat number 16E

Apfelbaum, Martin Lewis, stamp dealer, 59 years, born 16.08.29, Philadelphia, Pennsylvania, American, seat number 15H

Asrelsky, Rachel Marie, student, 21 years, born 26.11.67, New York, New York, American, seat number 38D

Atkinson, William Garretson III, engineer, 33 years, born 18.08.55, London, England, American, seat number 15A

Atkinson, Judith Ellen, art historian and consultant, 37 years, born 18.01.51, London, England, American, seat number 15B

Bacciochi, Clare Louise, hair stylist, 19 years, born 15.03.69, Warwickshire, England, British, seat number 50K

Bainbridge, Harry Michael, attorney, 34 years, born 16.11.54, Montrose, New York, American, seat number 4B

Barclay, Stuart Murray, businessman, 29 years, born 28.11.59, Farm Barnard, Vermont, Canadian, seat number 18G

Bell, Jean Mary, 44 years, born 16.03.44, Berkshire, England, British, seat number 5A

Benello, Julian MacBain, student, 25 years, born 28.12.62, Brookline, Massachusetts, American, seat number 23H

Bennett, Lawrence Ray, pharmaceutical chemist, 41 years, born 05.11.47, Chelsea, Michigan, American, seat number 15J

Bergstrom, Philip Vernon, army sergeant, 22 years, born 21.12.66, Forest Lake, Minnesota, American, seat number 46A

Berkley, Alistair David, professor of law, 29 years, born 11.04.59, London, England, American

Bernstein, Michael Stuart, lawyer, U.S. Dept. of Justice, Office of Special Investigation, 36 years, born 03.07.52, Bethesda, Maryland, American, seat number 47D

Berrell, Steven Russell, student, 20 years, born 19.06.68, Fargo, North Dakota, American, seat number 46F

Bhatia, Surinder Mohan, businessman, 51 years, born 21.05.37, Los Angeles, California, American, seat number 34D

Bissett, Kenneth John, student, 21 years, born 19.12.67, Hartsdale, New York, American, seat number 31J

Boatman-Fuller, Diane Anne, playwright, 37 years, born 08.01.53, London, England, American, seat number 22H

Boland, Stephen John, student, 20 years, born 28.09.68, Nashua, New Hampshire, American, seat number 46 G

Bouckley, Glen John, sales, 27 years, born 24.02.61, Liverpool, New York, British, seat number 39K

Bouckley, Paula Marie, sales, 29 years, born 14.10.59, Liverpool, New York, American, seat number 39J

Boulanger, Nicole Elise, student, 21 years, born 28.10.67, Shrewsbury, Massachusetts, American, seat number 28B

Boyer, Francis, 43 years, born 22.06.45, Toulosane, France, French, seat number 9A

Bright, Nicholas, businessman, 32 years, born 29.08.56, Brookline, Massachusetts, American, seat number 13A

Browner (Bier), Daniel Solomon, 23 years, born 20.08.65, Parod, Israel, Israeli, seat number 21A

Brunner, Colleen Renee, student, 20 years, born 01.04.68, Hamburg, New York, American, seat number 44C

Burman, Timothy Guy, banker, 24 years, born 09.10.64, London, England, British, seat number 38G

Buser, Michael Warren, advertising executive, 34 years, born 08.08.54, Ridgefield Park, New Jersey, American, seat number 35B

Buser, Warren Max, civil engineer, 62 years, born 22.09.26, Glen Rock, New Jersey, American, seat number 35A

Butler, Steven Lee, teacher, 35 years, born 30.08.53, Denver, Colorado, American, seat number 36G

Cadman, William Martin, musician, 32 years, born 10.09.56, London, England, British, seat number 29J

Caffarone, Fabiana, 28 years, born 30.09.60, London, England, British, seat number 7B

Caffarone, Hernan, 28 years, born 14.12.60, London, England, Argentinean, seat number 7A

Canady, Valerie, auditor, 25 years, born 29.06.63, Morgantown, West Virginia, American, seat number 24K

Capasso, Gregory, student, 21 years, born 12.12.67, Brooklyn, New York, American, seat number 48H

Cardwell, Timothy Michael, student, 21 years, born 05.07.67, Cresco, Pennsylvania, American, seat number 37D

Carlsson, Bernt Wilmar, diplomat, 50 years, born 21.11.38, New York, New York, Swedish, seat number 17H

Cawley, Richard Anthony, businessman, 43 years, born 09.07.45, New York, New York, American, seat number 16J

Ciulla, Frank, banker, 45 years, born 06.08.43, Park Ridge, New Jersey, American, seat number 11B

Cohen, Theodora Eugenia, student, 20 years, born 10.09.68, Port Jervis, New York, American, seat number 21H

Coker, Eric Michael, student, 20 years, born 23.04.68, Mendham, New Jersey, American, seat number 43B

Coker, Jason Michael, student, 20 years, born 23.04.68, Mendham, New Jersey, American, seat number 43A

Colasanti, Gary Leonard, student, 20 years, born 01.08.68, Melrose, Massachusetts, American, seat number 43C

Concannon, Bridget, 53 years, born 13.07.35, Oxfordshire, England, Irish, seat number 33H

Concannon, Sean, 16 years, born 18.02.72, Oxfordshire, England, British, seat number 33J

Concannon, Thomas, 51 years, born 21.11.37, Oxfordshire, England, Irish, seat number 33G

Corner, Tracey Jane, 17 years, born 04.05.71, Sheffield, England, British, seat number 33A

Cory, Scott, student, 20 years, born 27.09.68, Old Lyme Court, Connecticut, American, seat number 46D

Coursey, Willis Larry, military, 40 years, born 25.08.48, San Antonio, Texas, American, seat number 36K

Coyle, Patricia Mary, student, 20 years, born 04.06.68, Wallingford, Connecticut, American, seat number 20B

Cummock, John Binning, 38 years, born 31.05.50, Coral Gables, Florida, American, seat number 3A

Curry, Joseph Patrick, army captain, 31 years, born 21.03.57, Fort Devens, Massachusetts, American, seat number 44K

Daniels, William, Alan, research chemist, 40 years, born 28.03.48, Belle Mead, New Jersey, American, seat number 9H

Dater, Gretchen Joyce, student, 20 years, born 17.05.68, Ramsey, New Jersey, American, seat number 52J

Davis, Shannon, student, 19 years, born 19.02.69, Shelton, Connecticut, American, seat number 31A

Della-Ripa, Gabriel, Pan Am Airlines employee, 46 years, born 03.04.42, Floral Park, New York, Italian, seat number 2B

DiMauro, Joyce Christine, marketing director, 32 years, born 09.05.56, New York, New York, American, seat number 11J

DiNardo, Gianfranca, 26 years, born 14.10.62, London, England, Italian, seat number 20C

Dix, Peter Thomas Stanley, management consultant, 35 years, born 06.05.53, London, England, Irish, seat number 14B

Dixit, Om, college professor, 54 years, born 29.12.33, Fairborn, Ohio, Indian, seat number 24A

Dixit, Shanti, 54 years, born 14.12.34, Fairborn, Ohio, American, seat number 24B

Dornstein, David Scott, student, 25 years, born 03.04.63, Philadelphia, Pennsylvania, American, seat number 40K

Doyle, Michael Joseph, accountant, 30 years, born 21.05.58, Voorhees, New Jersey, American, seat number 9B

Eggleston, Edgar Howard III, air force sergeant, 24 years, born 13.10.64, Glens Falls, New York, American, seat number 32D

Ergin, Turhan, student, 22 years, born 14.05.66, West Hartford, Connecticut, American, seat number 28C

Fisher, Charles Thomas IV, banker, 34 years, born 24.12.53, London, England, American, seat number 25K

Flick, Clayton Lee, businessman, 25 years, born 23.02.63, Coventry, England, British, seat number 50J

Flynn, John Patrick, student, 21 years, born 24.11.67, Montville, New Jersey, American, seat number 45A

Fondiler, Arthur, attorney, 33 years, born 12.12.55, West Armonk, New York, American, seat number 47C

Fortune, Robert Gerard, insurance executive, 40 years, born 24.07.48, Jackson Heights, New York, American, seat number 1A

Freeman, Paul Matthew Stephen, 25 years, born 02.04.63, London, England, Canadian, Seat Number 46B

Fuller, James Ralph, corporate vice president, 50 years, born 17.09.38, Bloomfield Hills, Michigan, America, seat number 3H

Gabor, Ibolya Robertine, 79 years, born 14.06.09, Budapest, Hungary, Hungarian, seat number 26F

Gallagher, Amy Beth, student, 22 years, born 30.08.66, Pointe Claire, Quebec, Canada, American, seat number 23G

Gannon, Matthew Kevin, foreign service officer, 34 years, born 11.08.54, Los Angeles, California, American, seat number 14J

Garczynski, Kenneth Raymond, industrial engineer, 37 years, born 17.10.51, North Brunswick, New Jersey, American, seat number 47K

Gibson, Kenneth James, army specialist four, 20 years, born 16.02.68, Romulus, Michigan, American, seat number 48K

Giebler, William David, bond broker, 29 years, born 08.07.59, London, England, American, seat number 30B

Gordon, Olive Leonora, 25 years, born 09.03.63, London, England, British, seat number 45G

Gordon-Gorgacz, Linda Susan, 39 years, born 15.09.49, London, England, American, seat number 37A

Gorgacz, Anne Madelene, 76 years, born 27.09.12, Newcastle, Pennsylvania, American, seat number 38A

Gorgacz, Loretta Anne, 47 years, born 15.03.41, Newcastle, Pennsylvania, American, seat number 37B

Gould, David, college professor, 45 years, born 03.01.43, Pittsburgh, Pennsylvania, American, seat number 22C

Guevorgian, Andre Nikolai, businessman, 32 years, born 11.11.56, Sea Cliff, New York, American, seat number 11A

Hall, Nicola Jane, 23 years, born 03.02.65, Sandton, South Africa, South African, seat number 23K

Halsch, Lorraine Frances, special education teacher, 31 years, born 06.11.57, Fairport, New York, American, seat number 35C

Hartunian, Lynne Carol, student, 21 years, born 13.03.67, Schenectady, New York, American, seat number 44A

Hawkins, Anthony Lacey, businessman, 57 years, born 13.11.31, Brooklyn, New York, British, seat number 28K

Herbert, Pamela Elaine, student, 19 years, born 27.03.69, Battle Creek, Michigan, American, seat number 37J

Hilbert, Rodney Peter, 40 years, born 19.07.48, Newton, Pennsylvania, American, seat number 16H

Hill, Alfred, 29 years, born 29.06.59, Sonthofen, Germany, German, seat number 14A

Hollister, Katherine Augusta, student, 20 years, born 26.08.68, Rego Park, New York, American, seat number 54C

Hudson, Josephine Lisa, nurse, 22 years, born 14.05.66, London, England, British, seat number 50D

Hudson, Melina Kristina, student, 16 years, born 25.01.72, Albany, New York, seat number American 29A

Hudson, Sophie Ailette Miriam, 26 years, born 22.09.62, Paris, France, French, seat number 29H

Hunt, Karen Lee, student, 20 years, born 07.01.68, Webster, New York, American, seat number 31K

Hurst, Roger Elwood, marketing manager, 38 years, born 12.07.50, Ringwood, New Jersey, American, seat number 2H

Ivell, Elizabeth Sophie, dog handler, 19 years, born 21.04.69, East Sussex, England, British, seat number 19C

Jaafar, Khalid Nazir, student, 20 years, born 01.05.68, Dearborn, Michigan, American, seat number 53K
 Jeck, Robert van Houten, 57 years, born 08.10.31, Mountain Lakes, New Jersey, American, seat number 4J
 Jeffreys, Paul Avron, musician, 36 years, born 13.02.52, Surrey, England, British, seat number 38J
 Jeffreys, Rachel, advertising executive, 23, years, born 29.04.65, Surrey, England, British, seat number 38H
 Jermyn, Kathleen Mary, student, 20 years, born 27.12.67, Staten Island, New York, American, seat number 49A
 Johnson, Beth Ann, student, 21 years, born 24.03.67, Greensburg, Pennsylvania, American, seat number 36B
 Johnson, Mary Alice Lincoln, student, 25 years, born 14.06.63, Wayland, Massachusetts, American, seat number 33D
 Johnson, Timothy Baron, student, 21 years, born 30.11.67, Neptune, New Jersey, American, seat number 26A
 Jones, Christopher Andrew, student, 20 years, born 04.03.68, Claverack, New York, American, seat number 52K
 Kelly, Julianne Frances, student, 20 years, born 27.06.68, Dedham, Massachusetts, American, seat number 21E
 Kingham, Jay Joseph, pharmaceuticals executive, 44 years, born 03.03.44, Potomac, Maryland, American, seat number 5B
 Klein, Patricia Ann, social worker, 35 years, born 16.06.53, Trenton, New Jersey, American, seat number 28A
 Kosmowski, Gregory, marketing executive, 40 years, born 08.10.48, Milford, Michigan, American, seat number 8H
 Kulukundis, Minas Christopher, ship brokerage director, 38 years, born 17.12.50, London, England, British, seat number 51K
 LaRiviere, Ronald Albert, 33 years, born 19.11.55, Alexandria, Virginia, American, seat number 20H
 Leckburg, Robert Milton, engineer, 30 years, born 12.10.58, Piscataway, New Jersey, American, seat number 34C
 Leyrer, William Chase, businessman, 46 years, born 24.08.42, Bay Shore, New York, American, seat number 2J
 Lincoln, Wendy Anne, student, 23 years, born 21.01.65, North Adams, Massachusetts, American, seat number 28D
 Lowenstein, Alexander Silas, student, 21 years, born 25.02.67, Morristown, New Jersey, American, seat number 20D
 Ludlow, Lloyd David, army sergeant first class, 41 years, born 06.02.47, Macksville, Kansas, American, seat number 51A
 Lurbke, Maria Theresia, 25 years, born 26.11.63, Balve Beckum, Germany, German, seat number 52A
 Mack, William Edward, puppeteer, 30 years, born 24.04.58, New York, New York, American, seat number 36B
 Malicote, Douglas Eugene, army specialist four, 22 years, born 31.08.66, Lebanon, Ohio, American, seat number 48B
 Malicote, Wendy Gay, 21 years, born 31.07.67, Lebanon, Ohio, American, seat number 48A
 Marek, Elizabeth Lillian, actress and peace activist, 30 years, born 17.02.58, New York, New York, American, seat number 36C
 Marengo, Louis Anthony, marketing director, 33 years, born 09.02.55, Rochester, Michigan, American, seat number 3J
 Martin, Noel George, 27 years, born 31.05.61, Clapton, England, Jamaican, seat number 53A
 Maslowski, Diane Marie, currency trader, 30 years, born 10.08.58, New York, American, seat number 8B
 McAllister, William John, 26 years, born 18.10.62 in the Isle of Mull, Argyll, Scotland, Scottish, seat number 14E
 McCarthy, Daniel Emmet, banker, 31 years, born 02.11.57, Brooklyn, New York, American, seat number 6B
 McCollum, Robert Eugene, university professor, 61 years, born 12.05.27, Wayne, Pennsylvania, American, seat number 7J
 McKee, Charles Dennis, army major, 40 years, born 03.12.48, Arlington, Virginia, American, seat number 15F
 McLaughlin, Bernard Joseph, marketing manager, 30 years, born 12.12.58, Cranston, Rhode Island, American, seat number 36A
 Melber, Jane Susan, musician and teacher, 27 years, born 01.01.61, Middlesex, England, American, seat number 27H

Merrill, John, seaman, 35 years, born 11.07.53, Hertfordshire, England, British, seat number 37K

Miazga, Suzanne Marie, student, 22 years, born 31.07.66, Marcy, New York, American, seat number 23A

Miller, Joseph Kenneth, accounting firm executive, 56 years, born 27.05.32, Woodmere, New York, American, seat number 10B

Mitchell, Jewel Courtney, army second lieutenant, 32 years, born 14.06.56, Brooklyn, New York, American, seat number 27A

Monetti, Richard Paul, student, 20 years, born 11.09.68, Cherry Hill, New Jersey, American, seat number 20E

Morgan, Jane Ann, attorney, 37 years, born 19.03.51, London, England, American, seat number 42A

Morson, Eva Ingeborg, 48 years, born 29.04.40, New, York, New York, American, seat number 19G

Mosey, Helga Rachael, student, 19 years, born 21.09.69, West Midlands, England, British, seat number 22K

Mulroy, Ingrid Elizabeth, 25 years, born 22.04.63, Lund, Sweden, Swedish, seat number 34J

Mulroy, John, journalist, 59 years, born 01.04.29, East Northport, New York, American, seat number 34G

Mulroy, Sean Kevin, 25 years, born 03.05.63, Lund, Sweden, American, seat number 34H

Noonan, Karen Elizabeth, student, 20 years, born 26.12.67, Potomac, Maryland, American, seat number 20A

O'Connor, Daniel Emmett, U.S. diplomatic service, 31 years, born 22.09.57, Dorchester, Massachusetts, American, seat number 25H

O'Neil, Mary Denice, student, 21 years, born 02.04.67, Bronx, New York, American, seat number 38K

Otenasek, Anne Lindsey, student, 21 years, born 31.01.67, Baltimore, Maryland, American, seat number 45K

Owen, Bryony Elise, 1 year, born 29.04.87, Bristol, England, British, seat number 19D

Owen, Gwyneth Yvonne Margaret, student, 29 years, born 03.05.59, Bristol, England, British, seat number 19D

Owens, Laura Abigail, 8 years, born 01.01.80, Cherry Hill, New Jersey, American, seat number 35K

Owens, Martha, 44 years, born 02.06.44, Cherry Hill, New Jersey, American, seat number 35H

Owens, Robert Plack, 45 years, born 05.03.43, Cherry Hill, New Jersey, American, seat number 35G

Owens, Sarah Rebecca, 14 years, born 09.12.74, Cherry Hill, New Jersey, American, seat number 35J

Pagnucco, Robert Italo, attorney, 51 years, born 20.10.37, South Salem, New York, American, seat number 4A

Papadopoulos, Christos Michael, 45 years, born 11.11.43, North Lawrence, New York, American, seat number 17A

Peirce, Peter Raymond, architect and student, 40 years, born 28.09.48, Perrysburg, Ohio, American, seat number 47G

Pescatore, Michael, businessman, 33 years, born 06.09.55, Solon, Ohio, American, seat number 17J

Philipps, Sarah Susannah Buchanan, student, 20 years, born 15.08.68, Newtonville, Massachusetts, American, seat number 49C

Phillips, Frederick Sandford, student, 27 years, born 08.05.61, Little Rock, Arkansas, American, seat number 21F

Pitt, James Andrew Campbell, student, 24 years, born 06.11.64, South Hadley, Massachusetts, American, seat number 29K

Platt, David, architect, 33 years, born 13.12.55, Staten Island, New York, American, seat number 8A

Porter, Walter Leonard, musician, 35 years, born 10.03.53, Brooklyn, New York, American, seat number 25C

Posen, Pamela Lynn, student, 20 years, born 30.01.68, Harrison, New York, American, seat number 26K

Pugh, William, businessman, 56 years, born 29.02.32, Margate, New Jersey, American, seat number 21D

Quiguyan, Crisostomo Estrella, hotel cashier, 43 years, born 16.03.45, London, England, Filipino, seat number 30A

Ramses, Rajesh Tarsis Priskel, 35 years, born 26.05.53, Leicester, England, Indian, seat number 22A

Rattan, Anmol, 2 years, born 24.09.86, Warren, Michigan. American, seat number 24C

Rattan, Garima, computer programmer, 29 years, born 15.07.59, Warren, Michigan, American, seat number 23D

Rattan, Suruchi, 3 years, born 20.06.85, Warren, Michigan. American, seat number 23E

Reeves, Anita Lynn, 24 years, born 03.09.64, Laurel, Maryland, American, seat number 45D

Rein, Mark Alan, businessman, 44 years, born 12.02.44, New York, New York, American, seat number 2A

Rencevicz, Diane Marie, student, 21 years, born 13.07.67, Burlington, New Jersey, American, seat number 29G

Rogers, Louise Ann, student, 20 years, born 13.02.67, Olney, Maryland, American, seat number 29D

Roller, Edina, 5 years, born 24.11.83, Hungary, Hungarian, seat number 26D

Roller, Janos Gabor, 29 years, born 26.03.59, Hungary, Hungarian, seat number 26E

Roller, Zsuzsana, 27 years, born 21.12.61, Hungary, Hungarian, seat number 26G

Root, Hanne Maria, management consultant, 26 years, born 15.12.62, Toronto, Canada, Canadian, seat number 34K

Rosen, Saul Mark, businessman, 35 years, born 24.11.53, Morris Plains, New Jersey, American, seat number 32A

Rosenthal, Andrea Victoria, student, 22 years, born 05.02.66, New York, New York, American, seat number 35D

Rosenthal, Daniel Peter, student, 20 years, born 02.06.68, Staten Island, New York, American, seat number 21J

Rubin, Arnaud David, 28 years, born 18.05.60, Waterloo, Belgium, Belgian, seat number 39G

Saraceni, Elyse Jeanne, student, 20 years, born 01.06.68, East London, England, American, seat number 36D

Saunders, Scott Christopher, student, 21 years, born 20.05.67, Macungie, Pennsylvania, American, seat number 24D

Saunders, Theresa Elizabeth Jane, marketing, 28 years, born 24.10.60, Sunbury-on-Thames, England, British, seat number 14F

Schauble, Johannes Otto, 41 years, born 08.08.47, Kappellenweg, Germany, German, seat number 49K

Schlageter, Robert Thomas, student, 20 years, born 12.08.68, Warwick, Rhode Island, American, seat number 28G

Schultz, Thomas Britton, student, 20 years, born 05.01.68, Ridgefield, Connecticut, American, seat number 45C

Scott, Sally Elizabeth, chef, 22 years, born 17.01.66, Huntington, New York, British, seat number 56G

Shapiro, Amy Elizabeth, student, 21 years, born 28.10.67, Stamford, Connecticut, American, seat number 37G

Shastri, Mridula, 24 years, born 12.02.64, Oxford, England, Indian, seat number 24H

Sheanshang, Joan, 46 years, born 16.12.42, New York, New York, American, seat number 41C

Sigal, Irving Stanley, research biologist, 35 years, born 23.05.53, Pennington, New Jersey, American, seat number 13B

Simpson, Martin Bernard Christopher, financier, 52 years, born 25.10.36, Brooklyn, New York, American, seat number 27K

Smith, Cynthia Joan, student, 21 years, born 06.10.67, Milton, Massachusetts, American, seat number 41A

Smith, Ingrid Anita, chiropodist, 31 years, born 12.11.57, Berkshire, England, British, seat number 4H

Smith, James Alvin, 55 years, born 11.03.33, New York, New York, American, seat number 27G

Smith, Mary Edna, army sergeant, 34 years, born 14.07.54, Kalamazoo, Michigan, American, seat number 34A

Stevenson, Geraldine Anne, 37 years, born 31.03.51, Surrey, England, British, seat number 22E

Stevenson, Hannah Louise, 10 years, born 23.09.78, Surrey, England, British, seat number 22F

Stevenson, John Charles, 38 years, born 13.09.50, Surrey, England, British, seat number 22D

Stevenson, Rachael, 8 years, born 01.09.80, Surrey, England, British, seat number 22G

Stinnett, Charlotte Ann, 36 years, born 07.02.52, Duncanville, Texas, American, seat number 19J
 Stinnett, Michael Gary, army specialist, 26 years, born 27.05.62, Duncanville, Texas, American, seat number 19H
 Stinnett, Stacey Leanne, 9 years, born 30.07.79, Duncanville, Texas, American, seat number 19K
 Stow, James Ralph, businessman, 49 years, born 18.07.39, New York, New York, American, seat number 15E
 Stratis, Elia G., accountant, 43 years, born 17.06.45, Montvale, New Jersey, American, seat number 1B
 Swan, Anthony Selwyn, 29 years, born 15.05.59, Brooklyn, New York, Trinidadian, seat number 41K
 Swire, Flora MacDonald Margaret, medical student and researcher, 24 years, born 22.12.64, London, England, British, seat number 39D
 Tager, Marc Alex, 22 years, born 03.08.66, London, England, British, seat number 26H
 Tanaka, Hidekazu, 26 years, born 13.05.62, London, England, Japanese, seat number 24G
 Teran, Andrew Alexander, student, 20 years, born 31.08.68, New Haven, Connecticut, Bolivian, seat number 27D
 Thomas, Arva Anthony, student, 17 years, born 26.04.71, Detroit, Michigan, American, seat number 19A
 Thomas, Jonathan Ryan, 2 months, born 29.09.88, Southfield, Michigan, American, seat number 32K
 Thomas, Lawanda, air force sergeant, 21 years, born 17.02.67, Southfield, Michigan, American, seat number 32K
 Tobin, Mark Lawrence, student, 21 years, born 04.04.67, North Hempstead, New York, American, seat number 32G
 Trimmer-Smith, David William, publishing executive, 51 years, born 26.04.37, New York, New York, American, seat number 12A
 Tsairis, Alexia Kathryn, student, 20 years, born 06.07.68, Franklin Lakes, New Jersey, American, seat number 21G
 Valentino, Barry Joseph, exhibit designer, 28 years, born 25.02.60, San Francisco, California, American, seat number 20G
 Van-Tienhoven, Thomas Floro, 45 years, born 30.05.43, Buenos Aires, Argentina, Argentinean, seat number 2B
 Vejdany, Asaad Eidi, 46 years, born 24.02.42, South Great Neck, New York, American, seat number 20C
 Vrenios, Nicholas Andreas, student, 20 years, born 20.08.68, Washington, DC, American, seat number 46E
 Vulcu, Peter, stockbroker and student, 21 years, born 01.08.67, Alliance, Ohio, American, seat number 20K
 Waido, Janina Jozefa, 61 years, born 19.03.27, Chicago, Illinois, American, seat number 50A
 Walker, Thomas Edwin, electronics specialist, 47 years, born 11.12.41, Quincy, Massachusetts, American, seat number 16A
 Weedon, Kesha, student, 20 years, born 02.10.68, Bronx, New York, American, seat number 37H
 Weston, Jerome Lee, engineer, 45 years, born 11.11.43, Baldwin, New York, American, seat number 10A
 White, Jonathan, accountant, 33 years, born 14.07.55, North Hollywood, California, American, seat number 55J
 Williams, Bonnie Leigh, military, 21 years, born 12.01.67, Crown Point, New York, American, seat number 46K
 Williams, Brittany Leigh, 2 months, born 13.10.88, Crown Point, New York, American, seat number 46J
 Williams, Eric Jon, army sergeant, 24 years, born 15.08.64, Crown Point, New York, American, seat number 46J
 Williams, George Waterson, army first lieutenant, 24 years, born 17.05.64, Joppa, Maryland, American, seat number 33K
 Williams, Stephanie Leigh, 1 year, born 23.05.87, Crown Point, New York, American, seat number 46K
 Wolfe, Miriam Luby, student, 20 years, born 26.09.68, Severna Park, Maryland, American, seat number 21K
 Woods, Chelsea Marie, 10 months, born 06.02.88, Willingboro, New Jersey, American, seat number 25F
 Woods, Dederia Lynn, air force sergeant, 27 years, born 04.02.61, Willingboro, New Jersey, American, seat number 25G

Woods, Joe Nathan, civilian military worker, 28 years, born 05.03.60, Willingboro, New Jersey, American, seat number 25D
 Woods, Joe Nathan, Jr., 2 years, born 24.09.86, Willingboro, New Jersey, American, seat number 25E
 Wright, Andrew Christopher Gillies, site agent, 24 years, born 02.05.64, Surrey, England, British, seat number 55G
 Zwynenburg, Mark James, investment banker, 29 years, born 14.10.59, West Nyack, New York, American, seat number 12B
 Lockerbie Residents
 Flannigan, Kathleen Mary, 41 years, born 26.01.47, 16 Sherwood Crescent
 Flannigan, Thomas Brown, 44 years, born 20.12.44, 16 Sherwood Crescent
 Flannigan, Joanne, 10 years, born 13.06.78, 16 Sherwood Crescent
 Henry, Dora Henrietta, 56 years, born 27.03.32, 13 Sherwood Crescent
 Henry, Maurice Peter, 63 years, born 18.07.25, 13 Sherwood Crescent
 Lancaster, Mary, 81 years, born 12.01.07, 11 Sherwood Crescent
 Murray, Jean Aitkin, 82 years, born 29.11.06, 14 Sherwood Crescent
 Somerville, John, 40 years, born 31.05.48, 15 Sherwood Crescent
 Somerville, Rosaleen Later, affectionately know as 'Rosalind', 40 years, born 31.05.48, 15 Sherwood Crescent
 Somerville, Paul, 13 years, born 21.01.75, 15 Sherwood Crescent
 Somerville, Lyndsey Ann, 10 years, 13.07.78, 15 Sherwood Crescent

RESPONSES OF AMBASSADOR NANCY McELDOWNEY TO QUESTIONS SUBMITTED BY
 SENATOR ROBERT MENENDEZ

Question #1. Was the Department aware of and did the Department explore any possible connection between U.K. commercial interests in Libya and the decision to release Mr. al-Megrahi? In particular, did the Department explore the possible commercial influences of arms sales from the U.K. to Libya or Qatari loans to Scotland at the time of Mr. al-Megrahi's release? If not, why not?

Answer. During the months preceding Megrahi's release, the Department sought to dissuade Scottish authorities from permitting his transfer or release to Libya. While the U.K. Government has since acknowledged its 2007 communication with BP regarding the negotiation of the Prisoner Transfer Agreement (PTA) with Libya, the Scottish Government has released memos, correspondence, and meeting notes related to the matter and has asserted that economic considerations played no part in its decision to release Megrahi. As Ambassador McEldowney stated in her testimony, we have no evidence to dispute or disprove these assertions, nor are we in a position to verify these claims. Whatever the Scottish Government's rationale for releasing Megrahi, our position remains that the decision was categorically wrong and undermined the shared international understanding on Megrahi's imprisonment.

Question #2. Was the Department aware of and did the Department explore any possible connection between the two energy deals for U.K. oil companies that were announced by Former Prime Minister Blair during his visits to Libya and the decision to sign a Prisoner Transfer Agreement between the U.K. and Libya? If not, why not?

Answer. The Department was aware that the United Kingdom was reengaging with Libya and seeking to improve bilateral relations after the Libyan Government's 2003 decision to dismantle its WMD and missile programs. It was public information as far back as 2004 that, consistent with this reengagement, British energy companies were entering the Libyan market. To the best of our knowledge, the Department learned of the memorandum of understanding between the U.K. and Libya on judicial cooperation, in which the parties agreed to commence negotiations on a PTA, at the time of Prime Minister Blair's May 2007 visit to Libya.

The U.K. subsequently sought to negotiate a clause that would exclude Megrahi from a PTA, a position vocally supported by the Scottish Government. Prior to Megrahi's release, the Department was not aware of the conversations in late 2007 between the British Government and BP regarding the slow progress on PTA negotiations. We learned of these conversations later, after they had been acknowledged publicly by the parties involved. Then, as now, the United States was unequivocal in conveying to both British and Scottish authorities our resolute belief that Megrahi should serve out his full sentence in Scotland.

Question #3. Were any Foreign Service officers present when Sir Mark Allen spoke with U.K. Government officials regarding the Prisoner Transfer Agreement?

Have any such officers reviewed unreleased documents by the U.K. Government regarding its dialogue with BP and the PTA?

Answer. We are not aware of any State Department personnel being present for private conversations between Sir Mark Allen (or other BP officials) and the British Government. To the best of our knowledge, Department personnel also have not reviewed unreleased British Government documents concerning the U.K.'s dialogue with BP on the PTA.

Question #4. When U.K. Foreign Secretary Hague admitted multiple communications between BP and the U.K. Government, did the Department take any steps to investigate any possible connection between Mr. al-Megrahi's release and BP? If not, why not?

Answer. According to Foreign Secretary Hague's July 22 letter to Senator Kerry, BP told the British Government in October and November 2007 that failure to conclude the PTA could negatively impact British commercial interests, including its own. Foreign Secretary Hague's predecessor, David Miliband, acknowledged publicly last year that commercial considerations, along with other U.K. strategic interests, were taken into account in the U.K.'s decision to conclude negotiations and sign an overarching PTA with Libya in November 2008. Miliband told the House of Commons in October 2009 that abandonment of PTA negotiations with Libya "would have set back [Britain's] wider national and commercial interests that flowed from normalized relations." During his July 2010 visit to Washington, Prime Minister Cameron committed to a Cabinet review of British documents to determine whether further information can be brought to light.

Consideration of Megrahi's applications for prisoner transfer and "compassionate" release was a separate process from the U.K.'s decision to sign the PTA, exclusively within the purview of the devolved Scottish Government. We have called upon the Scottish Government to be as transparent as possible in illuminating the circumstances surrounding Megrahi's release. Scottish authorities assert they were neither pressured by the British Government nor influenced by commercial interests, and First Minister Alex Salmond and Justice Minister Kenny MacAskill have stated there was no contact between BP and Scottish authorities regarding Megrahi's case. The Department has no evidence to either affirm or dispute these assertions. Whatever Scottish authorities' rationale for releasing Megrahi, the U.S. position remains that he should serve out his full sentence in a Scottish prison.

Question #5. When the Department was asked to provide the committee all records it had associated with the release of Mr. al-Megrahi, it only provided 10, 6 of which were already available in the public domain. Is it the Department's position that there are only four additional documents that it holds associated with Mr. al-Megrahi's release?

Answer. On September 24, Chairman Kerry requested that the committee be granted access to certain categories of State Department documents related to the September 29 hearing on the circumstances surrounding Megrahi's release. Upon receiving the chairman's letter, the Department granted the committee access within 1 working day to responsive documents in its possession that could be shared without consent from third parties. Some of these—including historic documents provided to Scottish authorities last year to demonstrate the shared international understanding that, if convicted, Megrahi would serve his sentence in Scotland—were already in the public domain.

Since the hearing, the Department has obtained third-party permission to share five more responsive documents with the committee. These documents are available for review at the State Department at the convenience of committee staff. The Department also requested from the U.K. permission to provide the committee access to additional British historic documents related to the 1998 arrangements. These are being assessed for release as part of the ongoing review of materials being conducted by the U.K. Cabinet Secretary; therefore, the U.K. is unable to provide consent for the sharing of those documents at this time. We will inform the committee promptly if and when we receive consent to share further responsive materials.

Question #6. Does the Department have any intention of investigating the early release of Mr. al-Megrahi or urging the U.K. and Scottish Governments to conduct their own investigations into the early release of Mr. al-Megrahi?

Answer. The Department shares the desire for a clear understanding of the circumstances surrounding Megrahi's release. Ultimately, it is the responsibility of the British and Scottish Governments to shed light on this issue and on their actions. To this end, President Obama has called for all of the relevant facts to be made

available, and Secretary Clinton has encouraged the involved governments to review again the underlying facts and circumstances leading to Megrabi's release and to consider any new information that has come to light. Prime Minister Cameron has responded by committing to provide the fullest possible explanation of the circumstances surrounding this decision and has directed the British Cabinet Secretary to undertake a review of documents to consider whether further information can be released. We are currently awaiting the outcome of that process.

Question #7. Does the Department agree with the committee's interpretation of the Scotland Act of 1998 that any decision to release Mr. al-Megrabi from prison was a decision for Scottish authorities to make but that any decision to send Mr. al-Megrabi back to Libya was a reserved power decision for the U.K. Government to make?

Answer. The complexities and political sensitivities of devolution in the United Kingdom are extensive, and the Department is not in a position to authoritatively assess devolution arrangements and precedents in U.K. law. Prior to the Scottish decision, both the Scottish Government and the U.K. Government agreed that it was for Scottish authorities alone to decide on Megrabi's applications for prisoner transfer and for release on compassionate grounds. While it hypothetically may have been possible for the British Government to obstruct Megrabi's physical departure from Britain, in practice, given the domestic political and constitutional considerations in the U.K., our understanding was that the British Government would not take steps that would undermine its devolution arrangements with Scotland or its prior commitment to respecting whatever decision was ultimately made by Scottish officials.

Question #8. During your testimony at the hearing, the Department said that it had not seen any specific evidence that BP played a role in Mr. al-Megrabi's release. But given all that we know about commercial interests lobbying for Mr. al-Megrabi's release, and reports that meetings were occurring and correspondence transmitted between BP and the U.K. regarding Libya between 2007 and Mr. al-Megrabi's release, does the Department believe it is fair to say that commercial interests influenced the decision to release Mr. al-Megrabi? If not, why not?

Answer. In her testimony, Ambassador McEldowney stated that beyond publicly available statements and correspondence, the State Department has not identified any other materials concerning attempts by BP or other companies to influence matters related to Megrabi's transfer under the PTA or his release by Scottish authorities. As noted in the response to question #4, the British Government has acknowledged that commercial interests were taken into account, alongside political and national security considerations, in its decision to conclude and sign the PTA in November 2008. Ambassador McEldowney referenced British statements on this matter both in her testimony and during the question and answer portion of the hearing.

The question of whether commercial interests influenced the Scottish decision to release Megrabi is a separate matter, which is also addressed in responses to questions #1 and #4. Scottish authorities have said they had no contact with BP on this issue, and the Department has no evidence to either confirm or refute their statements. We have seen the letter sent by the chairman of the Libyan British Business Council, Lord Trefgarne, to Kenny MacAskill, as well as Mr. MacAskill's response in which he states the decision would "be based on judicial grounds alone and that economic and political considerations have no place in the process." We do not possess information which would contradict Mr. MacAskill's assertion.

LETTER FROM HON. ALEX SALMOND MSP, FIRST MINISTER OF SCOTLAND,
ST. ANDREW'S HOUSE, EDINBURGH

5 OCTOBER 2010.

Senator JOHN KERRY,
Chairman, U.S. Senate Committee on Foreign Relations,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR KERRY: It is with regret that I find it necessary to write to you again in connection with the hearing of the U.S. Senate Foreign Relations Committee on the al-Megrabi case on 29 September 2010. I understand that you were not present at the hearing, but there is a matter of concern that I would wish to raise with you as Chairman of the Committee.

On 28 September, the Scottish Government was approached by a journalist representing the Wall Street Journal seeking clarification about certain allegations that

had been made about the case. These allegations concerned comments said to have been made by an official of the Scottish Government at the meeting offered by the Scottish Government as a courtesy to a representative of Senator Menendez. They were completely without foundation.

In order to ensure that the Committee was in possession of correct information in advance of its hearing, the Scottish Government's representative in Washington wrote to your office on 28 September to set the record straight. I understand that a copy of his letter, which I attach for your information, was passed to the office of Senator Menendez, who was chairing the hearing.

It was therefore with intense disappointment that I noted that the same misinformation was presented to the hearing, unsupported by any evidence whatsoever, and no reference was made to the correction provided well in advance by the Scottish Government. The Scottish Government has made every effort to provide members of the U.S. Senate and their staff with information to assist their understanding of the matter, and it is extremely unfortunate that the concerns that I expressed in my letter of 10 September 2010 to Senators Menendez, Gillibrand, Lautenberg and Schumer about the prospects for a credible and impartial investigation have been realised.

I should therefore be grateful if you would investigate, as a matter of urgency, how the Committee came to be misled in this manner at its hearing. I would also request that you arrange for the letter of correction from the Scottish Government to be entered into the official record of the Committee.

ALEX SALMOND.

Attachment.

SCOTTISH AFFAIRS OFFICE,
BRITISH EMBASSY,
Washington, DC, 28 September 2010.

DOUG FRANTZ,
*Deputy Staff Director,
Senate Foreign Relations Committee.*

DEAR DOUG: In advance of the Senate Foreign Relations Committee's hearing tomorrow on the Al-Megrahi case, the Scottish Government has been approached by a journalist representing the Wall Street Journal for comment on the issue. Specifically, the journalist has asked about statements that are alleged to have been made by Scottish Government officials in a meeting with a Senate representative. Presumably he is referring to the meeting with officials that the Scottish Government offered as a courtesy to a staffer of Senator Menendez's office during his recent visit to Edinburgh.

It is a cause of deep disappointment to the Scottish Government that points discussed at the meeting have been passed to the Wall Street Journal in a totally inaccurate manner and in breach of the terms on which the request for a meeting with Scottish Government representatives was made by Senator Menendez's office. This clearly raises a question about the objectivity of Senator Menendez's investigation.

Of greater concern, however, is that the information passed to the Wall Street Journal is simply wrong. May I set the record straight on the two points we have been asked about today?

First, as has been stated many times, and was said several times at the meeting between Scottish Government officials and Senator Menendez's staffer, the medical report to the Justice Secretary came from Dr. Andrew Fraser, Director of Health and Care of the Scottish Prison Service, and the prognosis was his. It was Dr. Fraser's responsibility to prepare the medical report for Mr. MacAskill, and Dr. Fraser who concluded that his clinical assessment was that a three month prognosis was a reasonable estimate, drawing on the work of a range of specialists and other Scottish Health Service professionals involved in Al-Megrahi's care from when he was first diagnosed with cancer in 2008.

Given the importance of this case, it was appropriate that the most senior health professional in the Scottish Prison Service, Dr. Fraser, was responsible for providing the medical report which formed part of the consideration of the application for compassionate release. With the exception of this point, ie the most senior SPS health professional providing the report, this is exactly the same process which has been followed in the over 60 cases considered under the relevant legislation which was passed in 1993.

Second, it is a matter of public record that Al-Megrahi was not on chemotherapy treatment in Scotland at any point, and it is also a matter of record that his hormone treatment had failed as the firm consensus of specialists was that his condition had become "hormone resistant."

I should be grateful if you would draw this clarification to the attention of the Committee in advance of its hearing tomorrow, which I understand may include consideration of these points.

Yours,

ROBIN NAYSMITH,
*Scottish Government Counsellor,
North America.*

STATEMENTS SUBMITTED FROM FAMILIES OF VICTIMS OF PAM AM FLIGHT 103

To the Committee:

My name is Susan Cohen. I am the mother of Theodora Cohen who died in the Pan Am 103 bombing when she was twenty years old. I welcome these hearings. I have never believed that Megrahi's release had anything to do with compassion. Compassion is a saintly virtue. Megrahi's release can be traced to far more devilish motives. Greed, chiefly. A corrupt British government, fueled by British Petroleum's eagerness for oil profits decided to get Megrahi out of prison one way or another. If not a prison transfer, then compassionate release. If they could have gotten away with it they would have put Megrahi in a box tied with ribbons and hand-delivered him to Ghadafi. The price of bringing Ghadafi into the so-called community of nations has been a collapse of any policy that isn't total appeasement. Ghadafi has done horrible things, and to this day his regime's human rights record is one of the worse in the world. But governments bow and scrape to him, flatter him, give him what he wants. And he wanted Megrahi. Never mind that Megrahi was a convicted mass murderer, that Lockerbie was the worst mass murder in British history, in Scottish history, and until 911 the worst act of terror against civilians in United States history. Megrahi was released, presumably to die within three months. He received a hero's welcome in Libya, is alive today and lives in luxury in Tripoli. Why did we ever both with the trial in the first place?

This situation is absolutely appalling. A cynical move; government at its worst. Two hundred seventy people died gruesome deaths when Pan Am 103 was bombed. My daughter's body landed in a sheep meadow miles from the plane. All her bright promise gone in an instant. and my life ruined. I blame Bush and Cheney for initiating the policy of appeasement towards Ghadafi. I blame Tony Blair, now so cozy with Ghadafi that he stays in Ghadafi's palace and advises companies on how to do business with Libya; for a price, of course. And this from a Britain which was remarkably brave in World War II. As for my own government, Obama has continued the Bush policy. We were lied to when we were told our government was taken by surprise at Megrahi's release. The Le Baron letter makes clear our government knew in advance, and though we would have preferred Megrahi to remain in jail our weak tepid response showed the Brits they had nothing to fear from us if he was released. From the time Obama (and I supported him and donated to his campaign) became president, several of the families tried to get a meeting with Secretary of State Clinton to encourage our government to work hard to keep Megrahi in prison. A tough America might have been able to force the British to keep Megrahi in prison. We never got our meeting. We were not even given a contact person high in the Administration to talk to. The Obama Administration claims it's in touch with the families. Not so. It is only in touch with some of the families. It should be in touch with the rest of us.

Megrahi in prison was merely a sliver of justice. Now we don't even have that. And nothing was ever really done to punish Ghadafi. And how could the bombing have taken place without his approval? So what have we become, we Americans? Would we stand up to Hitler? Would we stand up to the Soviet Union or China? I am not at all sure. If we are willing to kiss the feet of a tinpot tyrant like Ghadafi because all we care about is money, we'll cave in to more powerful nations when the moment's right. That's what happens to nations who make money their God.

SUSAN COHEN.

COLUMBIA, SC, *September 28, 2010.*

DEAR SENATOR MENENDEZ: My first husband Bill Daniels was killed on board Pan Am 103 December 21, 1988. I followed the Scottish trial in the Netherlands very closely. I was living in NJ at that time and could get to the closed circuit tv's set up by the Scots for us to view the trial in NYC. Four times I flew over to the Netherlands and was there in person when the first Scottish panel of judges found Mr. Megrahi guilty of mass murder. Later, he appealed his conviction and I was there

for much of that appeal, and likewise was present in Zeist, Holland, when he was AGAIN found guilty by another panel of Scottish judges, and lost his first appeal. I have followed this story very closely over the years. He is a convicted mass murderer, whose conviction remains on the books.

I went with my younger daughter last year to testify via video conference in front of Kenny MacAskill in Washington, DC. We begged him not to let Megrahi go free. At that time, we thought he was only considering the Prisoner Transfer Agreement, not this "compassionate release" that he later used. Unfortunately Mr. MacAskill did let Mr. Megrahi go because he had cancer. This was such a travesty that he should do so when all of us were begging him to keep him in jail. Mr. Megrahi showed no compassion to our loved ones on Pan Am Flight 103.

Mr. Megrahi, of course, went home to a hero's welcome in his native Libya. Mr. Megrahi, of course, has lived MUCH longer than his three month life expectancy that Mr. MacAskill told the world that he had left—in fact, thirteen months later he is still alive. Now we have found out that the doctors who SUPPOSEDLY had been consulted about his life expectancy, of course, hadn't been consulted! Now we find out that BP oil has a big new contract to dig off the coast of Libya, of course, a coincidence, too.

Senator Menendez, I write you as a private citizen, but also as the VP of the Victims of Pan Am Flight 103. We on the board of VPAF103 applaud you for taking these steps to try to get some answers to this and to show the world that the Scottish government acted too hastily at the very least. Prostate cancer is a very treatable disease and Mr. Megrahi's cancer should have been treated IN JAIL IN SCOTLAND instead of letting him free to go back to his homeland. What kind of message does this send to the terrorists of the world?

Thank you and good luck on this hearing. I wish that I could be there in person tomorrow to tell you how grateful I am for your support!

Sincerely,

KATHY (DANIELS) TEDESCHI.

ELIZABETH DELUDE-DIX AND
DERMOT DELUDE-DIX,
Jamestown, RI.

Senator Menendez and other members of the Committee, on learning of Mr. al-Megrahi's imminent release, I went straight to my laptop and googled: Libya + oil fields. It was then that I learned Libya has an undeveloped oil field the size of Belgium. At first I was startled but quickly experienced what can be described as a clarifying moment. Since then it has become public knowledge that BP actively lobbied for Mr. al-Megrahi's release to secure an oil deal in Libya. Once again the almighty profit motive has trampled the rule of law.

My name is Elizabeth Delude-Dix. My husband Peter Dix (aged 35) was a passenger aboard Pan Am flight 103 which was destroyed over Lockerbie, Scotland. Peter was on his way to a one day business trip in NYC. At the time we were living in London and Peter planned a quick turn-around so that he would be home to celebrate Christmas with his 22 month old son, Dermot. Dermot, now aged 23, is with me here today. We have prepared this statement together.

The long saga of Lockerbie has been filled with half truths, heart break and crushing political cynicism. Our family believes that we have never learned the full truth of what happened on December 21, 1988.

That the U.K. and Scottish authorities colluded to release Mr. al-Megrahi is clear. What is less clear is: Why?

U.K. oil companies certainly stand to reap enormous profit from the development of Libyan oil. But what has also occurred is the quiet subversion of the legal process. How convenient that any potential irregularities in Mr. al-Megrahi's conviction will now never be examined.

Indeed there have been many questions surrounding Mr. al-Megrahi's conviction. The legal community suggested several different reasons to support his appeal. However, in requiring Mr. al-Megrahi to drop his appeal, the Scottish authorities effectively foreclosed the possibility of a more complete disclosure of the truth surrounding the bombing of PanAm flight 103. Who other than the corporation BP stood to benefit from the discontinuation of this legal inquiry? Once again any information held by U.K. or the U.S. governments which may have clarified the events leading to the bombing is now beyond the reach of the families and the public.

Mr. al-Megrahi's release was clearly motivated by more than compassion for his poor health. His return to Libya not only advanced U.K. commercial interests, it subverted the judicial process. How can there be justice without accountability? This

is not an act of judicial compassion but an exploitation and manipulation of the rule of law.

As the wife and son of Peter Dix, what matters most to us is not whether one man dies in prison. We know that the available intelligence was not acted upon by those whose job it is to protect us. Lockerbie could have been prevented. Today, twenty-one years later, we ask that all those who carried out this crime be held responsible, and we also demand a full disclosure of the circumstances leading up to this event.

FROM Helen Engelhardt, widow of Anthony Lacey Hawkins, one of the 270 people murdered when a semtex bomb in a Toshiba RT-SF 16 stereo radio cassette recorder model Bombeat, wrapped in a random assortment of clothing purchased in a clothing shop in Malta, all of it hidden inside of a copper colored 26-inch Samsonite Silhouette 4000 hardshell suitcase, exploded in the baggage container AVE4041 of the Boeing 747 Maid of the Seas on its evening flight Pan Am #103 out of London, 31,000 feet over the town of Lockerbie, Scotland at 7:03 pm on December 21, 1988.

Al-Megrahi, a Major in the Libyan Intelligence Service, the man accused of having organized the assembly of the bomb, of having bought the clothing that filled the unaccompanied suitcase case, was unanimously found guilty in the Lockerbie Trial held at Camp Zeist in the Scottish Court in the Netherlands on January 31, 2001. His appeal was unanimously denied a year later and Al-Megrahi was flown to Scotland on March 14, 2002, where he was supposed to begin serving a life sentence. He served seven years, five months and five days before being released on August 20, 2009.

Here we are again. The case that will not die. That refuses to close. The lid of the coffin that keeps being pried open.

Through all the upheavals and reversals, the legal battles and victories and setbacks of the past 21 years, there was one reliable rock we thought we could rely on: the integrity of the Scots. They would never betray us. And then, they did.

Megrahi appealed the guilty verdict again. While it crept its way forward during the past winter and spring of 2008/2009, we paid more attention to the Prisoner Transfer Agreement. (The curious history of the PTA: Jack Straw, The British Secretary of State for Justice, had negotiated with Libya in the summer of 2007, a new Agreement which would allow prisoners to be returned to their respective nations. The original formulation specifically excluded al-Megrahi by name until suddenly in December 2007, Straw withdrew Megrahi's name, making him eligible for exchange since "The wider negotiations with the Libyans are reaching a critical state, and in view of the overwhelming interests for the United Kingdom, I have agreed that in this instance the PTA should not mention any individual.

"Saif Gaddafi, son of the Libyan leader, has said that negotiations on the PTA intersected with the commercial discussions between the two countries. A \$900 million oil and gas exploration agreement between the British energy giant BP and Libya's National Oil Company was reached in May 2007. BUT IT WAS NOT RATIFIED UNTIL AFTER THE PTA WAS AGREED UPON" (my emphasis) (quoted from Time September 14, 2009 page 30).

On August 20, 2009, the Scottish Cabinet Minister of Justice, Kenny MacAskill, denied Libya's application for Megrahi's release under the PTA. But then MacAskill went on to declare that he was releasing Megrahi on "Compassionate Grounds" because he "might die within three months from terminal prostate cancer," and refused to consider transferring him elsewhere in Scotland because security would be too difficult. While announcing his decision to the press, Megrahi was on his way home to a hero's welcome in Saif Qaddafi's private plane. If Al-Megrahi had indeed died within three months—which had to be reasonably certain for the Grounds of Compassion to be legally applied—it wouldn't have made the decision just or appropriate. It still was stained by the oil deal. But at least, it wouldn't have been a public embarrassment to the Scottish government, and a continuing outrage to the American families. (Why the English and Scottish families are divided on this issue is too complicated to discuss in this statement. I don't know how the other families in some twenty other nations feel, having not heard any opinion from them.)

For twenty one years, the families took comfort in the meticulous dedication of the Scottish Police, the dog handlers who located the bodies and the women who washed the clothing of our loved ones. Debris from the crash had spread over more than 800 square miles—from Lockerbie to the North Sea. The searchers were told: "If it's not a rock and it's not growing, pick it up and put it in a bag." By Christmas Day, a piece of metal was found that FAA senior explosives expert, Walter Korsgaard, identified as the first proof a bomb had caused the explosion.

Because of the thorough, dedicated work of hundreds of men and women, several critical pieces of evidence were retrieved from the tons of debris: the blast damaged fragments of that Samsonite suitcase, the blast damaged fragment of an instruction manual for the Toshiba RT-SF16 recorder, the blast damaged fragment of a printed circuit board from a MEBO MST 13 timer, the blast damaged label from a “Yorkie” brand pair of trousers.

And the significance of these discoveries? “A summary of the world-wide sales figures for Toshiba RTSF16 stereo radio cassette recorders from October 1985 to March 1989 . . . shows that Libya (purchased) almost 76 percent of that model from Toshiba between October 1988 and March 1989.

Mr. Bollier (the “Bo” in MEBO) in his testimony for the prosecution at the Lockerbie Trial in June of 2000, stated in 1991 to Scottish and American detectives, that he only sold this model timer to Libya (in 1993 after Libya offered him a loan of 1.8 million dollars, he suddenly recalled he had sold MST 13 timers to the Stasi as well); he delivered radio devices and 20 timers to Libya in 1986 into the hands of Abdelbaset Megrahi, a man Bollier believed to be a Major in the Libyan Intelligence Services.

Bollier taught Libyan military people in the autumn of 1987 in Libya, how to prevent bombs from exploding prematurely. In December of 1988 he tried to deliver and collect payment on 40 more MST 13 timers. He flew to Tripoli on December 18 and booked a return flight on December 20 from Tripoli to Malta on the very same flight that al-Megrahi and al-Fhimah were on. Bollier changed his plans and returned to Zurich on a direct flight. He claims that he did not meet with Abdelbaset. He claims that no one paid him for his timers.

The “Yorkie” brand label on a pair of trousers, led detectives to the factory which led them to Mary’s House, in the town of Slima on the island of Malta. Mary’s House was the clothing shop where the clothing surrounding the Toshiba stereo recorder bomb had been purchased. The shopkeeper, Anthony Gauci, told the police who came to see him in September 1989, that he had sold two pairs of Yorkie trousers—one bearing the identical order number to the fragment found in Lockerbie—to a Libyan man a fortnight before Christmas, in December 1988. The man also bought a random assortment of clothing, obviously not for any particular person. Anthony Gauci found that peculiar, and therefore, memorable. He assisted in an artist’s rendering of what the Libyan had looked like in September 1989, picked out the face of al-Megrahi among a group of photographs in February of 1991, picked him out in an identification parade of persons in April 1999, and then, ultimately pointed him out in the dock during the trial in Kamp Zeist in 2000. The judges wrote: “he was entirely credible . . . doing his best to tell the truth to the best of his recollection. We are satisfied that his identification of the first accused as the purchaser was reliable and should be treated as highly important evidence in this case.”

In an extraordinary coincidence, one of the policemen who followed the clothing clue from Lockerbie to Malta was the very man who found the body of my husband lying on a field in Halldykes Farm in the outskirts of Lockerbie, Detective John Crawford. My son Alan and I, met Detective Crawford in New York City in September 2000. We were also in the courtroom at Camp Zeist when Mr. Gauci identified Mr. Al-Megrahi.

You are not retrying the evidence that sent Mr. Al-Megrahi to prison with a life sentence. If you were, there is even more damning and convincing evidence that sent Al-Megrahi to prison that I could outline. Even Kenny MacAskill went out of his way to reiterate Al-Megrahi’s guilt before he sent him home to Libya. He also stated that “This is a global issue and international in its nature. The questions to be asked and answered are beyond the jurisdiction of Scots law and the restricted remit of the Scottish government. If a further inquiry were felt to be appropriate then it should be initiated by those with the required power and authority. The Scottish Government would be happy to fully cooperate in such an inquiry.”

There have been, in my opinion, some half hearted investigations by the Scottish government looking into Mr. MacAskill’s reasoning. With all the evidence revealed a year ago in the British press of the oil deal brokered between BP and Libya, with BP lobbying on behalf of Libya’s obsessive interest in obtaining the release of Al-Megrahi, the British government has not and has no intention of opening an investigation of its own. Prime Minister Cameron called the release “completely and utterly” wrong and refuses to call for his government to look into BP’s role.

We had a measure of justice—and then it was snatched away from us. We all know that Megrahi was acting under orders from his government. Unnamed co-conspirators were indicted along with Al-Megrahi and Fhimah. The criminal case is still open.

Through all the upheavals and reversals, the legal battles and victories and setbacks of the past 21 years, there was another reliable rock we thought we could rely on: the integrity of the men and women in our government. They would never betray us. And they haven't. From day one, Congressmen and women, Senators, people who work in the FBI and CIA and the Justice Department, have done everything they could to see that the evidence was gathered thoroughly and accurately and that justice would be done. Bills and amendments to bills were crafted and passed in order to keep the unresolved case in the forefront of our collective attention.

Five years ago this month, the Senators and Congressmen from New York and New Jersey, stood with us when we gave a press conference calling for our government not to give diplomatic recognition to Libya until it fulfilled the last provision of the legal agreement it had signed with the families. And now this summer, Senators Schumer and Menendez called for investigating BP under the Foreign Corrupt Practices Act.

I support you wholeheartedly in this endeavor. I have never felt helpless in the face of this tragedy, but I have recognized the reality that the mass murder that occurred over Lockerbie Scotland twenty two years ago is international in scope and involves several governments and their agencies—and now it seems, the biggest company in Britain and the fifth biggest on Earth: British Petroleum. Sir Mark Allen, former head of the counterterrorism department of Britain's M16 intelligence service, retired from that post to become a senior executive in British Petroleum. It is a difficult investigation to conduct. But it needs to be done—to honor the two hundred and seventy souls who were murdered because they flew in a plane that carried the American flag as a logo.

Sincerely,

HELEN ENGELHARDT HAWKINS.

It is with the deepest pain and anguish that I submit this testimony 21½ years after the premeditated destruction of Pan Am Flight 103 over Lockerbie, Scotland. Throughout this time, the families have advocated, at great personal cost, for truth and justice in the resolution of this case of mass murder. At no time did we request or expect any monetary compensation for this grave injustice but rather, we simply, wanted the answers to the questions, who, why, where and how. It took years of lobbying to effect U.N. sanctions which, ultimately, resulted in a trial and conviction. I remember sitting with the U.S. Ambassador to the U.N., when we insisted that no money be demanded as part of the sanction regimen. His reply was that it was absolutely necessary, as money is the currency of diplomacy. In the end, we got one conviction and 10 million dollars per family (less one-third plus expenses for the lawyers). Even our small modicum of justice was tinged with blood money and greed.

One year ago, that small token of justice was snatched from us as Megrahi was released to go back to Libya on compassionate grounds. All the reasons why this was a gross miscarriage of justice have been eloquently reiterated in the interviews and letters from the Senators from NJ, Menendez and Lautenberg, and from NY, Schumer and Gillibrand, Secretary of State Clinton, President Obama and U.K. Prime Minister Cameron. The flim-flam medical opinion that precipitated the release was transparently laughable and the lobbying influence of BP and other oil interests clamoring for Libyan oil contracts was patently despicable.

So what happens now? One year later, you are holding hearings to do what? The oil contracts have been awarded, Colonel Kaddafi has recouped his \$270 million in compensation fourfold and Megrahi is ensconced in luxury in the bosom of his family for the next ten years or more. Tell me, Senators, how do I explain this to my grandchildren?

There is no political, economic or diplomatic will to force Kaddafi to give up Megrahi again. The families are powerless as they prostrate themselves before you in grief and desperation. I, for one, after 21 years, am tired of taking the high road to truth and justice to no avail.

So, I propose the following:

(1) The U.S. must convince the U.N. to reimpose sanctions against Libya which demand that Megrahi be incarcerated in Libya under the watchful eye of a Scottish security detail 24-7. That is the very least the Scots can do after they abandoned the families.

(2) Kaddafi must pay \$20 million more to each family from the oil enrichment funds that have been pouring into his coffers since last August. No lawyer's fees or expenses.

Sounds greedy and opportunistic, doesn't it? Sounds un-American, doesn't it? It comes from sheer desperation and futility from this mockery of justice. The families have spent the last 20 plus years working to protect the American people from suffering the same horrors we face everyday. We have altruistically turned our grief into positive actions for the common good. Senators, you have to walk in my shoes to know how victimized, abandoned and abused I feel.

I can assure you that I can do more in one week with that blood money in The Alexia Foundation for World Peace and Cultural Understanding (www.alexiafoundation.org) than Khaddafi can do in two lifetimes with his ill-gotten gains from the oil contracts.

APHRODITE THEVOS TSAIRIS,
*Mother of Alexia Tsairis,
Victim Pan Am Flight 103.*

Statement from the Victims Pan Am Flight 103:

On December 21, 1988, Pam Am Flight 103 exploded over Lockerbie, Scotland, murdering all 259 people on the plane and 11 citizens in Lockerbie. All of these victims were innocents. As the Lord Advocate of Scotland, Colin Boyd, later summarized: "400 parents lost a son or a daughter, 46 parents lost their only child, 65 women were widowed, 11 men lost their wives, 140 children lost a parent, and 7 children lost both parents."

After an exhaustive investigation by U.S. and Scottish authorities, Libyan agent Abdel Basset Ali al-Megrahi was convicted. He appealed this conviction but it stood. It still stands, even though Scottish Minister of Justice Kenny MacAskill released Megrahi on August 20, 2009, on "compassionate grounds" based on the claim that he had only 3 months to live.

The Scottish government has shown compassion to this convicted mass murderer of 270 innocent souls. The convicted mass murderer never showed compassion for any of his victims.

On behalf of VPAF103,

JUDY O'ROURKE,
*Recording Secretary, VPAF 103,
Syracuse University Alumnae.*

As America witnessed the release and subsequent hero's welcome granted Abdel-Basset Al Megrahi upon his return to Libya, our collective sense of outrage at this miscarriage of justice was palpable. It was a sad moment for the American people. But for the families of the victims of Pan Am 103, it was something worse. It was not merely an act that reopened old wounds and raised troubling new questions. As one of those family members shared with me, it was as if their loved one had been murdered all over again.

Our concern has only deepened now that as this convicted terrorist, granted compassionate release because he supposedly had only months to live, remains alive and healthy over one year later.

This is a man convicted of ending 270 innocent lives by turning an airplane full of college students coming home for Christmas into a deadly fireball. As I said at the time, he did not deserve the supposed "compassion" he failed to show others, and he does not deserve his freedom today.

Releasing Megrahi was the opposite of "compassionate." Speak with the mothers, sons, friends, neighbors and classmates who lost a loved one on Pan Am Flight 103 and you will get a gut-wrenching reminder that this has torn open wounds that will never fully heal.

Lisa Jones, who lost her husband, Charles, said that Megrahi's "early release continues to add to the emotional toll on all our families."

Doris Cory lost her twenty-year-old son, Scott. "When your children are murdered," she said. "You don't let that go."

Nicholas Bright was just sixteen months old when his father was murdered. Even before Megrahi outlived his medical prognosis, Nicholas was pained that Megrahi should have the family time he denied to the Brights.

Jeannine Boulanger lost her daughter Nicole, a talented acting student at Syracuse coming home from her study abroad. As Jeannine said, "We feel our children were ripped from our bodies and spirits, and we feel we can do no less than to see this to a justifiable conclusion.

They—and not Mr. Megrahi—are the ones who deserve our compassion.

I welcome U.K. Prime Minister David Cameron's frank acknowledgment that Megrahi's release was "wrong." We will continue to express our outrage at the release of this convicted terrorist. And we will continue to investigate how justice could have been so ill-served.

My name is Ioana Alimanestianu, a U.S. citizen for 56 years and New York resident for nearly 60 years. I submit this statement on behalf of my family and my deceased husband Mihai. We are victims of Libyan terrorism. On September 19, 1989, UTA Flight 772 was forty minutes into its flight from Chad to Paris, cruising at 35,000 feet, when a bomb exploded causing the plane to break up and crash into the Sahara Desert, killing all 170 people on board, seven of whom were Americans. Our beloved husband, father and brother, Mihai Alimanestianu, was a passenger on Flight 772. Mr. Al-Megrahi was ultimately convicted for involvement in the bombing of Pam Am Flight 103 over Lockerbie in 1988, but his position as a Libyan intelligence officer provides reason to believe that he was involved in the bombing of UTA 772 which killed my husband one year later.

I am compelled to submit this statement because I share many of the same sentiments, and questions, that have been expressed by a number of Senators, including my own Senators Schumer and Gillibrand, about the circumstances surrounding the release of Mr. Al-Megrahi. I don't know whether there is anything the United States government can do to correct the apparent injustice of his premature release from prison by another sovereign government. But shining a light on this situation hopefully will cause others in the future to think more carefully about the need to respect the victims of terrorism. That said, I am also compelled to use the occasion to call the Committee's attention to a perhaps little known situation that has resulted in an injustice totally within the control of our own government that continues to haunt American victims more than 20 years after the UTA Flight 772 bombing.

First, and most importantly, I want you to know my husband Mihai, who was an amazing man.

Mihai was born in Bucharest, Romania in 1919. In Romania, we met and married in 1947. Shortly thereafter, we escaped from communist Romania and made our way to New York via Texas where we became U.S. citizens. We were married for 42 wonderful years, and had five children. Mihai was a caring and engaged father who encouraged his children to excel in their chosen careers. He created a home life for his children that included constant learning and art. Mihai diligently taught his children to be mindful of how their conduct would affect the world. His loss deprived them of a strong and loving father figure. Mihai's murder affected not only his immediate family, but also his brothers and their families.

In addition to a loving family, Mihai also left behind a legacy of great achievement. He was a mechanical engineer by training and an amazing inventor. He held several patents on his inventions including one for an automatic parking garage system and another for an automated people mover. At the time of the bombing, he was returning from Africa where he had just concluded a contract with the United States Agency for International Development to help build Africa's infrastructure, and was on his way to see his daughter, Joanna, and her five-month-old twins. In Africa he was first in Gabon where he was assisting the country in its efforts to build a national railroad system, he then moved on to Chad where he was assisting that country in its efforts to rebuild a crumbling infrastructure. Working was one of his great passions.

Upon Mihai's return to New York, he was planning to continue to engage in some freelance work, redevelop his patents and develop a parcel of land he owned along the Hudson River in New York. It was a long-time dream of his to build the perfect house along the Hudson River. He spent many days along the river with his children planting trees and further beautifying the land. The land was his refuge. To honor Mihai's memory, our family conveyed his beloved land to the Trust for Public Land so that it would be preserved for future generations to enjoy.

Although nothing will ever make our pain go away, we wanted to ensure that justice was served. To that end, our family and other families of the U.S. victims of UTA Flight 772 pursued the remedies made available to us by Congress under the Foreign Sovereign Immunities Act ("FSIA"), commenced litigation in 2002, and successfully obtained judgments in U.S. courts. We and other family members testified, and ultimately we were able to prove that Libya was guilty of murdering our loved ones. The hearing record describes in great detail the evidence supporting the horrendous and painful manner in which the passengers of UTA 772 died: "In addition to the initial shock of explosive decompression . . . the disorienting experience of feeling the temperature instantly drop 129 degrees . . . shards of metal . . . embed-

ding themselves into people badly enough to cause pain but not badly enough to kill. Some passengers caught on fire from the explosion. As a result, many of the passengers burned alive as they plummeted [39,000 feet] to earth.” As you can only imagine, the trial was a difficult and painful process that required us to relive our worst nightmare.

In January 2008, the United States District Court for the District of Columbia entered judgment against Libya and awarded approximately \$1.6 billion to the estates of the deceased and 44 immediate family members to compensate for wrongful death, emotional distress and loss of solatium injuries. With this decision by a federal court came some closure to our long ordeal with Libya being held responsible for the heinous crime that was committed against our beloved husband, father and brother.

When S. 3370, the Libyan Claims Resolution Act, was introduced, we were shocked that Congress was considering invalidating our verdict. Without consulting the victims’ families, Congress unanimously passed S. 3370 the day the bill was introduced. No hearing was ever held or debate undertaken on the legislation. Although we raised strong objection to the legislation itself and the process, our pleas were ignored. When we inquired into the need for government intervention, we were told that legislation was necessary so that all the claims against Libya could be resolved quickly. In addition, we received assurances that our court judgment would be honored and respected.

We were skeptical of these claims, and unfortunately our worst fears have come true. The State Department has delegated much of the implementation of S. 3370 to the Foreign Claims Settlement Commission (“FCSC”). Once again, we strongly objected to this action by the State Department because we believe that the FCSC is not well suited to take on this unique responsibility, and the process would be further delayed. The federal courts have already made a determination about the damages that are due to our family, and thus, we believe that the State Department is in a position to resolve this issue expeditiously.

Furthermore, it has now been nearly two years since the U.S. government received a settlement from Libya and the issue is still not resolved, and there is no end in sight. The FCSC has been without a quorum since February so their proceedings have come to a standstill until a new Commissioner can be nominated and confirmed by the Senate. A name has not even been sent to the Senate for consideration, so it is highly unlikely that we will see closure by the end of this year. Given the broken process, the State Department should take responsibility and award funding for claims such as ours that take no significant fact finding. For claims that are more complicated, the State Department could appoint a special master to resolve the outstanding issues in a timely manner.

As the Foreign Relations Committee considers the Al-Megrahi release, we beg you to consider other victims of Libyan terrorism and their families. All too often our pleas for fairness and assistance have gone unanswered. It has now been twenty-one years since our family lost Mihai, and it so important that you do what you can so that we can reach closure. This has gone on too long.

Thank you.

Truth and justice do not simply demand an investigation of the role BP played in the release of Megrahi last August. The interplay of the British with Scottish and U.S. officials and business interests must be uncovered and made public. Megrahi’s release was inevitable—a decision of governments, years long in the making. The decision was handed over to the Scots but was one for which the British and U.S. governments bear a heavy burden of responsibility.

Megrahi’s release was a devastating blow to the families of the Pan Am 103 victims. However shameful and appalling, the release was not surprising. In fact, the expectation of some families was that he would be released—the question was when and how.

The stage was set for Megrahi’s release the day the United States relinquished control over his prosecution and detention. The United States surrendered its jurisdiction to pressures driven by oil and big business and politics to try Megrahi internationally instead of in the United States. Gadhafi spent years seeking a compromise to a trial in the United States—the only way he could get Libya out from under the sanctions the United Nations and the United States had imposed. This was also the only way oil and big business interests could get back into Libya.

During the span of years between the indictment of Megrahi in 1991 and the imposition of U.N. sanctions to the trial of Megrahi in 1999, the U.S. attitude toward his prosecution changed. The families knew the end of U.S. control was in sight. The British had been pressuring the U.S. for an international solution. The dialogue

was no longer about U.S. objection to an international trial but what kind of international trial could be acceptable. In 1999, the day U.S. officials told some of us that they were getting daily calls from oil interests to reach a solution, we knew Gadhafi had won. Two of us knew an international trial was imminent when the Ambassador from one of the large moderate Middle East countries asked us to come to the Embassy in DC for a meeting. He said Gadhafi would agree to families demands to Gadhafi to turn Megrahi over—with one “little bitty change”—an international trial.

The British had gone so far as promise then-President Clinton that if either or both of the indicted defendants were convicted they would remain imprisoned in the United Kingdom. Clinton was so assured that he conveyed this to the families at the ceremony in Arlington in 1998 marking the 10th anniversary of the bombing—a ceremony at which Hillary Clinton, then first lady was present.

Yet, the promise lacked the status of a formal written agreement and did not take into account any future changes in British or Scottish law—changes which were significant to Megrahi’s future release. When Megrahi began serving his term in Scotland, there was no Prisoner Transfer Agreement and the Scots did not have independent authority over their prison system which they did have when they released Megrahi.

The trial of Megrahi at Camp Zeist in the spring of 2000 began the progression that led to Gadhafi’s rehabilitation. After Megrahi’s conviction, the rest is the history of that rehabilitation and how Gadhafi succeeded in getting Megrahi released.

Looking back on events, Gadhafi had barely mouthed acceptance of responsibility for the bombing (the first condition imposed by the U.N. for ending sanctions) when he renounced that acceptance. Gadhafi and Libyan officials proceeded over the years to issue statements saying that Megrahi was innocent. They never stopped trying to get Megrahi released—through their spokesmen to the families and their business and political supporters. Gadhafi took all the necessary steps to get the U.N. and U.S. sanctions removed. And, the greatest travesty of all—the removal of Libya from the U.S. list of terrorist nations.

With the ending of economic, airline, travel, and diplomatic sanctions, Libya once again opened its doors to western trade. However, Libya withheld lucrative trade and oil contracts, using them as bargaining chips for Megrahi’s release. By May 2007, the same month that Britain and Libya signed a memorandum of understanding that would lead to a Prisoner Transfer Agreement, BP reportedly signed a \$900 million oil exploration agreement with Libya.

When the negotiations of former British Prime Minister Tony Blair for this future Prisoner Transfer Agreement with Libya were revealed publicly some months after they occurred, the families sprang into action. Our concerns were quickly brushed aside by U.S. officials. The Bush administration and the Congress should have gone public then. Instead, the families were told that nothing had happened yet and there was nothing they could do until something happened. Repeated requests by the families to meet with Secretary of State Rice in 2008 went unanswered. Obama became President and families’ requests to meet with Secretary of State Clinton went unanswered.

This let-it-go mentality permeated the progression of events—from the finalization of the Prisoner Transfer Agreement which would allow Britain and Libya to exchange prisoners to the Agreement’s ratification by the British parliament to the consideration of Megrahi’s release either through the British transfer agreement or by Scottish compassionate release.

As the decision drew closer, the United States still did not go public with objections to the release. Secretary of State Clinton did meet with Scottish First Minister Alex Salmond when he visited Washington in the spring of last year. Along the way, the Scots transferred the decisionmaking to Justice Minister MacAskill. In the final days before the decision, both the Secretary of State and Attorney General telephoned objections to Megrahi’s release to MacAskill. NSC’s John Brennan telephoned MacAskill on behalf of Obama. A concerned few in the Congress wrote a powerful letter to the administration. However, it was too late. The U.S. response had not been visible or forceful enough all along or at the 11th hour.

The press reported a few days ago that the deputy head of London’s U.S. Embassy, Richard LeBaron, sent a letter to First Scottish Minister Alex Salmond a week before the release stating that compassionate release of Megrahi would be a preferable alternative to his release under the Prisoner Transfer Agreement. He, in effect, said we prefer you don’t release him but, if you must, do it on compassionate grounds. What was clear from his letter was that fighting Megrahi’s release wasn’t an important enough issue for the United States—that the United States was not going to demand that Megrahi be kept in prison in Scotland—that the United States was being careful not to anger the Scots and tread on their jurisdiction—the very

reason U.S. officials told the families all along that they could not intervene. Megrahi's release was inevitable by now and doing it under compassionate grounds was the lesser of two evils, the one that would avoid taking on the British and rattling key alliances with them.

Almost a year later, Megrahi is still alive and home in Libya—he has lived nine months beyond medical projections. At no time during the Scots' consideration of his release did the United States strongly and publicly demand that direct medical evidence be produced or decry the insignificance of the evidence produced or further urge that an international team of doctors review the evidence and be identified (families did ask U.S. officials to make this request). Full disclosure of the medical evidence that was used to release Megrahi is still as important now, if not more important, than at the time of his release. The Scottish people and the police and prosecutors who carry the scars of this decision should demand this and if not, call on Justice Minister MacAskill and First Minister Salmond to resign.

Regardless of the medical evidence, the release of Megrahi under any circumstances was a blow not only to justice for the families but future international efforts to prosecute and contain terrorism. The Scottish government's release of Megrahi was a betrayal not only to the U.S. families and government but the entire Scottish nation.

Ultimately, the international trial to prosecute Megrahi and the decision to release him was more about the rehabilitation of Gadhafi and access to rich Libyan crude than about justice for the convicted murderer of 270 innocent victims, 189 of them Americans. My 20-year-old step-daughter, Miriam Luby Wolfe, was one of them.

ROSEMARY WOLFE,
Former President,
Pan Am 103 Family Groups.

