Exhibit E

to the Memorandum of Points and Authorities

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

M. VICTORIA CUMMOCK, in her own right, and as Personal Representative of the ESTATE of JOHN CUMMOCK, deceased; CHRISTOPHER JOHN CUMMOCK; MATTHEW DAVID CUMMOCK; and ASHLEY MICHELLE CUMMOCK,	)	
Plaintiffs,	)	
v.	)	**Case No. 96-CV-1029 (CKK)**
THE SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA; LIBYAN EXTERNAL SECURITY ORGANIZATION, a/k/a JAMAHIRIYA SECURITY ORGANIZATION; LIBYAN ARAB AIRLINES; ABDEL-BASSET ALI AL-MEGRAHI, a/k/a MR. BASET, a/k/a AHMED KHALIFA ABDUSAMED, a/k/a ABD AL-BASIT AL-MAQRAHI; and LAMEN KHALIFA FHIMAH, a/k/a AL AMIN KHALIFA FHIMAH, a/k/a MR. LAMIN,	)	
Defendants.	)	

DECLARATION OF JULIE ROSE O'SULLIVAN

I, Julie Rose O'Sullivan, declare under penalty of perjury as follows:

Curriculum Vitae of Declarant

1. After securing an A.B. from Stanford University, I attended Cornell Law School, graduating *summa cum laude* with a J.D. in 1984. I then clerked for the Chief Judge of the U.S. Court of Appeals for the First Circuit, Hon. Levin H. Campbell (1984-85). The following year, I clerked for U.S. Supreme Court Associate Justice Sandra Day O'Connor (1985-86). Thereafter, I practiced for approximately five years at the New York law firm of Davis Polk & Wardwell, primarily in the area of white-collar criminal defense.

2. In 1991, I became an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorneys Office for the Southern District of New York. Although my cases covered a

variety of subject-matters, most of my time was spent prosecuting white-collar offenders. When my former boss at Davis Polk & Wardwell, Robert B. Fiske, Jr., was appointed the regulatory Independent Counsel in the Whitewater Investigation by Attorney General Janet Reno, I agreed to accompany him to Little Rock. After setting up the office and completing one of my cases, I left the office to take up a pre-existing job offer to teach at Georgetown University Law Center ("GULC").

3. I began teaching at GULC in October 1994 and was tenured and promoted to full professor in early 1998. My CV, attached as Exhibit A, details the courses I have taught and my most significant publications. I wrote a casebook entitled *Federal White-Collar Crime*, now in its second edition, which covers procedural and substantive criminal law and which, I am informed, is the leading textbook in the field. I am in the process of co-authoring a casebook, tentatively entitled *Transnational and International Criminal Law*, with Professor David Luban of GULC and David Stewart, Assistant Legal Adviser at the U.S. Department of State.

4. In my eleven years of teaching, I have taught courses in basic criminal procedure (covering pre-trial constitutional criminal procedure), advanced criminal procedure (covering trial and appellate issues), substantive criminal law, federal white-collar crime, and international criminal law. Because of my experience and background in criminal law and procedure, I have been asked to moot many criminal cases scheduled for argument before the U.S. Supreme Court.

5. This affidavit is based on my expertise in U.S. criminal law and procedure. In anticipation of writing this declaration, I have reviewed, *inter alia*: the Revised Indictment lodged against Abdelbaset Ali Mohmed Al Megrahi ("Mr. Megrahi") and Al Amin Khalifa Fhimah; the opinion of the High Court of Justiciary at Camp Zeist convicting Mr. Megrahi of murder for his role in the bombing of Pan Am Flight 103 over Lockerbie, Scotland [hereinafter cited as "Trial Court Op."]; the opinion of the Appeal Court of the High Court of Justiciary rejecting Mr. Megrahi's appeal [hereinafter cited as "Appeals Court Op."]; the Declaration of Alistair J. Bonnington, with its attached exhibits [hereinafter cited as "Bonnington Declaration"]; and the Declaration of Dana D. Biehl of the U.S. Department of Justice [hereinafter cited as "Biehl Declaration"].

6. This Court obviously is, due to its experience and positioning, better qualified than I to assess the degree to which the Scottish justice accorded Mr. Megrahi comports with U.S. standards of due process. I submit this declaration solely to attempt to ease the Court's

burden in this respect by setting forth the reasons for my conviction that Mr. Megrahi's trial and appeal fully satisfied American legal standards for due process in criminal proceedings.

Procedural Due Process under U.S. Law

7. "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified.' It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972) (citations omitted); *see also Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case'") (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). What this means in the general run of criminal cases is well fleshed-out, and can be determined by reference to the Bill of Rights and the Supreme Court case law interpreting those amendments. When viewed in light of this corpus of law, the due process accorded Mr. Megrahi in the Lockerbie case met and even exceeded American standards, as will be explored below.

8. Some of the procedures employed in the Lockerbie case may arguably have deviated from American constitutional rules. To test the effect, if any, of those deviations on the due process rights of the accused, one must turn to the balancing test first articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and most recently applied by the Supreme Court in *Hamdi v. Rumsfeld*, -- U.S. --, 124 S.Ct. 2633 (2004):

> The ordinary mechanism that we use ... for determining the procedures that are necessary to ensure that a citizen is not "deprived of life, liberty, or property, without due process of law," U.S. Const., Amdt. 5, is the test that we articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *Mathews* dictates that the process due in any given instance is determined by weighing "the private interest that will be affected by the official action" against the Government's asserted interest, "including the function involved" and the burdens the Government would face in providing greater process. 424 U.S., at 335. The *Mathews* calculus then contemplates a judicious balancing of these concerns, through an analysis of "the risk of an erroneous deprivation" of the private interest if the process were reduced and the "probable value, if any, of additional substitute safeguards."

124 S.Ct. at 2646.

9. Employing this test in *Hamdi*, the Supreme Court held that a U.S. citizen detained by the U.S. government for over two years as an alleged "enemy combatant" in the

U.S.'s war on terror and who sought to challenge that classification had to be given "notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." *Id.* at 2648. In light of the "exigencies of the circumstances," however, the Supreme Court determined that many safeguards employed in criminal cases were not warranted; that is, the Supreme Court held that a citizen suspected of being an enemy combatant could be deprived of his liberty for extended periods based on an adjudication, perhaps by a military tribunal but certainly without a jury, founded on hearsay and employing a rebuttable presumption in favor of the Government's evidence. *Id.* at 2649, 2651.

10. In short, deviations from the constitutional norm, even in cases where what is at stake is the extended deprivation of a citizen's fundamental right to personal liberty, is not necessarily fatal in due process terms. In such circumstances, the entirety of the procedures employed must be examined to determine whether, in total, the procedural protections afforded are sufficient to avoid erroneous results in light of the competing individual and governmental interests at stake and the procedural alternatives available to the parties. One should structure this balancing by examining the steps taken to ensure that the irreducible due process requirements are met: effective notice and a meaningful opportunity to be heard before a neutral decision maker.

Notice

11. The Sixth Amendment to the U.S. Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be informed of the nature and cause of the accusation" against him. Federal Rule of Criminal Procedure 7(c)(1) requires that the "indictment or information ... be a plain, concise, and definite written statement of the essential facts constituting the offense charged." In evaluating the sufficiency of pleadings for Sixth Amendment purposes, the Supreme Court in *Hamling v. United States*, 418 U.S. 87 (1974), articulated the following rule:

> [A]n indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense. It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as "those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished." *United States v. Carll*, 105 U.S. 611, 612 (1882). "Undoubtedly the language of the statute may be used in

> the general description of an offence, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged." *United States v. Hess*, 124 U.S. 483, 487 (1888).

Id. at 117-118. The revised indictment considered by the trial court in adjudicating the accuseds' guilt satisfies the standards articulated by the Supreme Court and Rule 7.[1] It informs the defendant of the crime charged--murder--and its constituent elements, and provides the defendant a clear record upon which to found future double jeopardy arguments. *See* Bonnington Declaration, Exh. 9 (containing revised indictment). By the standards of the federal criminal indictments with which I am familiar, it is an indictment that is actually generous to the defense. In my experience, federal charging instruments often do little more than reiterate of the language of the statutory prohibition at issue to meet constitutional pleading standards. The revised indictment at issue, by contrast, provides a great deal of detail regarding the prospective evidence to be presented. Perhaps in recognition of this fact, the defense apparently lodged no objection to the completeness of the indictment. *See* Bonnington Declaration, Exh. 2 (Opinion of the High Court of Justiciary rejecting defense objections to parts of the original indictment). Accordingly, in U.S. court, any such non-jurisdictional defect would have been waived. *See* Federal Rule of Criminal Procedure 12(b)(3)(b); *cf. United States v. Cotton*, 535 U.S. 625 (2002).

12. There appears to be no question but that Mr. Megrahi personally received notice of the charges against him. The Bonnington Declaration details how the indictment was, in accordance with Scottish law, served on the defendant, paras. 24-26. Mr. Bonnington states that Mr. Megrahi did not object to the form of service of the indictment. *Id.* at para. 25. It should be noted that Scottish procedure also seems to provide for the equivalent of an initial appearance. *See* Federal Rule of Criminal Procedure 5. That is, after arrest, a Petition warrant (in U.S. parlance, a complaint) is drafted giving the defendant notice of the charges against him, and that charging document is provided to the defendant in an appearance before the Sheriff-Principal (in federal courts, an initial appearance). Bonnington Declaration at paras. 22-23. Mr. Bonnington avers that this procedure was followed, apparently within the time frame normally employed in federal courts. *Compare id.* at para. 23 *with* Federal Rule of

[1] I am not sure whether the indictment was revised prior to verdict to omit two of the offenses originally charged based on defense motion or the Crown's voluntary dismissal of the charges. In either case, the defense apparently did not object to this obviously favourable development. This would not cause due process difficulties in American courts. *Cf.* Federal Rules of Criminal Procedure 7(d), (e), 48.

Criminal Procedure 5(a)(1). In short, Mr. Megrahi received, after arrest and well in advance of trial, effective notice of the charges the defense was required to meet.[2]

Meaningful Opportunity to Be Heard

13. *Jury Trial Right.* The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to ... trial, by an impartial jury." Scottish criminal law, like American criminal law, provides the accused the right to a jury trial in serious criminal proceedings. For the reasons outlined in the Biehl and Bonnington Declarations, however, this case was tried in the Netherlands before a panel of three Scottish Judges of the High Court of Justiciary. This circumstance does not undermine the reliability of the verdict, nor should it affect our *Mathews* due process balancing. My reasons for so concluding are discussed below.

14. First, the right to a trial by jury is, in American law, not generally rationalized as a guarantor of a more reliable, fairer, or more accurate judgment. Indeed, the U.S. Supreme Court held that Sixth Amendment's jury trial right was applicable to the State through the Due Process Clause of the Fourteenth Amendment *despite* arguments that permitting untrained laymen to determine the facts may not be the wisest way to administer a criminal justice system. *Duncan v. Louisiana*, 391 U.S. 145, 156-57 (1968). In *Duncan*, the Supreme Court made clear that the rationale underlying the right to a trial by a jury of one's peers guaranteed by the Sixth and Fourteenth Amendments is in essence a political one; that is, this right is necessary to prevent miscarriages of justice occasioned by arbitrary or

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[2] The grand jury right included within the Fifth Amendment is the sole criminal procedure right contained within the Bill of Rights that the Supreme Court continues to hold does *not* apply to the States through the Due Process Clause of the Fourteenth Amendment. *Hurtado v. California*, 110 U.S. 516 (1884); *see also Ocampo v. United States*, 234 U.S. 91, 98 (1914) ("That the requirement of an indictment by grand jury is not included within the guaranty of 'due process of law' is, of course, well settled," citing *Hurtado*). The Supreme Court in *Hurtado* found that the right to a grand jury indictment is not required of the States as a matter of due process. It is my understanding that approximately half the States do not provide a right to grand jury indictment in all serious cases, or provide for some combination of preliminary hearings and grand jury proceedings. Further, the Supreme Court also held in some of the so-called *Insular Cases* that due process does not require that the right to grand jury indictment be afforded to those living in unincorporated U.S. territories. *See, e.g., Ocampo*, 234 U.S. 91 (Fifth Amendment grand jury provision inapplicable in Philippines); *Hawaii v. Mankichi*, 190 U.S. 197 (1903) (Fifth Amendment grand jury provision inapplicable in Hawaii); *see also United States v. Verdugo-Urquidez*, 494 U.S. 259, 268 (1990) (relying in part on the *Insular Cases* in holding that the Fourth Amendment did not apply to the search by American authorities of the Mexican residence of a Mexican citizen who had no voluntary and significant connection with the United States). And Mr. Megrahi's conviction would, of course, render any irregularities in the screening process (and, one could argue, the lack of a screening process) harmless beyond a reasonable doubt. *See United States v. Mechanik*, 475 U.S. 66 (1986) (holding that a conviction necessarily demonstrates that an error occurring in the conduct of the grand jury (here, a violation of Federal Rule of Criminal Procedure 6(d)) is harmless beyond a reasonable doubt).

oppressive action by the government. As the *Duncan* Court explained, the jury trial right is first and foremost a safeguard "against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge":

> If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of a single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence.

Id. at 156-57.

15. Accordingly, the *Duncan* Court vigorously rejected the State of Louisiana's argument that its holding would "cast doubt on the integrity of every trial conducted without a jury." *Id.* at 157. The Supreme Court stated:

> Plainly, this is not the import of our holding. ... We would not assert ... that every criminal trial—or any particular trial—held before a judge alone is unfair or that a defendant may never be as fairly treated by a judge as he would be a jury. Thus we hold no constitutional doubts about the practices, common in both federal and state courts, of accepting waivers of jury trial and prosecuting petty crimes without extending the right to jury trial.

Id. at 158; *see also id.* at 149 n.14 ("A criminal process which was fair and equitable but used no juries is easy to imagine.").[3]

16. Obviously, Mr. Megrahi's case is not one in which the American rationale for the need for a jury determination is applicable. To my knowledge, the defense did not contend that Mr. Megrahi was subjected to an unwarranted or otherwise abusive prosecution. Indeed, the Appeals Court repeatedly emphasized on appeal that Mr. Megrahi did not contest the sufficiency of the evidence supporting his conviction. *See, e.g.*, Appeals Court Op. at paras. 4 ("At the trial it was not submitted on the appellant's behalf that there was insufficient evidence in law to convict him. In its judgment the trial court rejected certain parts of the evidence relied upon by the Crown at trial. Nevertheless, it was not contended in the appeal that those parts of the evidence not rejected by the trial court did not afford a sufficient basis in law for conviction"), 5, 369. Mr. Megrahi's interests were championed by Libya, which

[3] Where a jury has been waived, it is essential that the judge be disinterested and unbiased. *See, e.g., Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 617 (1993) ("due process requires a 'neutral and detached judge in the first instance.'") (citation omitted). In the absence of any allegations or indications that the judges acted improperly, it is only fair to assume that the three-judge panel acted with professionalism and integrity. As is discussed above, it is my opinion that, on its face, the trial court's opinion evidences the judges' conscientiousness and fairmindedness.

forced the other States concerned to accommodate themselves to the method of trial apparently preferred by Mr. Megrahi and his champions. The negotiated mode of trial received the approval of the United Nations, and that compromise, as well as the trial itself, was subjected to intense international scrutiny. In short, this is not a situation in which a jury would have served as a bulwark between a citizen and an overzealous government. Indeed, many practitioners (including this one) would likely concur with Libya's and Mr. Megrahi's defense counsel's judgment that Mr. Megrahi's best chance of a fair evaluation of the evidence lay in adjudication by expert judges.

17. Although the jury trial is the constitutional paradigm in serious criminal cases, it is not the means by which the overwhelming majority of criminal convictions are secured in State or federal proceedings. I have appended as Exhibit B to this declaration U.S. Sentencing Commission data demonstrating that from 1999 to 2003, between 94.6% and 97.1% of all federal criminal cases were resolved by plea; correspondingly, in the same period, only between 2.9% and 5.4% of cases were resolved by trial. Further, Department of Justice data indicates that, of those few cases resolved by trial, a goodly portion were judge trials. The attached Justice Department information demonstrates, for example, that in federal criminal cases terminated in 2001 (the only year for which I have hard numbers): 2,820 cases were tried before a jury; 1,536 were disposed of in non-jury trials; and 64,894 cases were resolved by guilty plea.

18. The Supreme Court has affirmed the due process validity of the guilty plea process that has rendered the jury trial a sideshow in the federal justice system. *See, e.g.*, *Bordenkircher v. Hayes*, 434 U.S. 357 (1978); *Brady v. United States*, 397 U.S. 742 (1970). It has even approved the U.S. government's practice of denying a jury trial right to U.S. citizens and others tried for crimes in unincorporated territories. Thus, in the so-called *Insular Cases*, the Supreme Court held that due process does not require that jury trials be afforded to those living in these territories because the jury right is not a "fundamental" constitutional right. *See, e.g.*, *Balzac v. Porto Rico*, 258 U.S. 298 (1922) (Sixth Amendment right to jury trial inapplicable in Puerto Rico); *Dorr v. United States*, 195 U.S. 138 (1904) (jury trial provision inapplicable in Philippines); *see also United States v. Verdugo-Urquidez*, 494 U.S. 259, 268 (1990) (relying in part on the *Insular Cases* in holding that the Fourth Amendment did not apply to the search by American authorities of the Mexican residence of a Mexican citizen who had no voluntary and significant connection with the United States). The Supreme Court has also held that the U.S. armed forces are not required to offer U.S. service members a right to trial by jury, presumably at least in part in the belief that such a right is not essential to the

fair and accurate resolution of the criminal charges lodged against those serving their country in the military services. *See, e.g., Solorio v. United States,* 483 U.S. 435 (1987); *Ex parte Milligan*, 71 U.S. 2, 122-23 (1866).

19. Finally, the U.S. government generally has demonstrated its belief in the fairness and reliability of judge-trials. Thus, for example, the U.S. government has actively promoted and supported the resolution of the most serious of crimes—genocide, crimes against humanity, war crimes, and the crime of aggression—by international tribunals in which trials are conducted before panels of judges. Notably, juries are not involved in any way in the determination of guilt or innocence in these tribunals. *See, e.g.*, Charter of the International Military Tribunal at Nuremburg Arts. 1-5, 82 U.N.T.S. 279 (1945); Statute of the International Criminal Tribunal for the Former Yugoslavia Arts. 11-15, 20, 23, U.N. S.C. Res. 827 (1993); Statute of the International Tribunal for Rwanda Arts. 10-14, 19, 22, U.N. S.C. Res. 955 (1994). The U.S. government also regularly extradites its own nationals to meet charges in foreign courts where juries are not available. According to some courts, "[t]he existence of [an extradition] treaty between the United States and another nation indicates that, at least in a general sense, the executive and legislative branches consider the treaty partner's justice system sufficiently fair to justify sending accused persons there for trial." *In re Extradition of Howard*, 996 F.2d 1320, 1329-30 & n. 6 (1st Cir. 1993); *see also Glucksman v. Henkel*, 221 U.S. 508, 512 (1911); *Neely v. Henkel*, 180 U.S. 109, 122-23 (1901).

20. In view of the above, it cannot seriously be contended that the entry of a conviction by a judge, rather than a jury, constitutes a violation of American due process ideals.

21. A defendant may waive his right to a trial by jury under American law. *See Patton v. United States*, 281 U.S. 276 (1930); Federal Rule of Criminal Procedure 23(a)(1). In many cases, a voluntary but unwarned failure to claim certain fundamental constitutional rights will result in a finding of waiver. *See, e.g., Schneckloth v. Bustamonte*, 412 U.S. 218 (1973) (Fourth Amendment during consent search); *Rogers v. United States*, 340 U.S. 367 (1951) (Fifth Amendment privilege against self-incrimination is waived during course of grand jury proceedings if not asserted). These rights, then, may be waived if a defendant simply does not assert them, assuming his actions were not coerced by official actions. A valid waiver of a constitutional *trial* right, however, is generally said to require evidence of "an intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (right to counsel); *see also Patton*, 281 U.S. at 312-13. To

meet this standard, the court must generally be satisfied that there has been a knowing, intelligent and voluntary waiver by the defendant.

22. I do not know whether a jury trial waiver meeting this standard was ever formally secured from Mr. Megrahi. In any case, I believe an effective waiver can be inferred given the extraordinary circumstances surrounding the resolution of the international dispute concerning the method and venue of Mr. Megrahi's trial. Certainly, Mr. Biehl's declaration suggests that Libya was acting with the consent of Mr. Megrahi in insisting that he and his co-defendant be subject only to a judge trial outside of Scotland given that the basis for this demand was a concern that these men could not receive a fair and unbiased trial before a Scottish jury sitting in Scotland. *See, e.g.*, Biehl Declaration at para. 26; *see also* Bonnington Declaration at paras. 19, 36; *id.*, Exh. 5 at paras. 16, 19, 23 & 24 (Libyan Position Paper). It is also notable that Mr. Megrahi could have agreed to extradition to Scotland, where he would have been afforded a jury trial. He chose not to do so, Bonnington Declaration at para. 23; Biehl Declaration at para. 26, thus permitting Libya to push for an unprecedented change in Scottish trial rules to accommodate concerns about the fairness of any jury trial conducted in Scotland. Mr. Biehl also avers that Mr. Megrahi's counsel expressly asserted throughout the preliminary hearings that, in his view, Mr. Megrahi had a right to a jury trial—notwithstanding the international agreement on a judge trial. *See* Biehl Declaration at para. 27. Nonetheless, the defense never filed a motion or sought a jury trial. *See id.*; *see also* Bonnington Declaration at para. 36. In short, Mr. Megrahi apparently actively (and in my view wisely) opposed a trial by Scottish jury. *See also id.* Consistent with this position, he has never to my knowledge asserted that a judge trial deprived him of due process, even if he disagreed with some of the evidentiary calls and inferences made by the three-judge court.[4] *See* Biehl Declaration at para. 27.

23. In light of the fact that both the defense and the governments involved believed that a judge-trial would meet the demands of due process, little "balancing" of interests is

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[4] The Sixth Amendment and Article III, section 2 also provide a form of venue right. The Sixth Amendment states that a defendant has a right to be tried by a jury "of the State and district wherein the crime shall have been committed." *See* also U.S. Const., art. 3, sec. 2 (trial to be had in the State where the crime was committed).

A defendant may waive this right. Indeed, the Supreme Court has held that a state is constitutionally required to allow a change in venue if a fair trial cannot be had in the district in which the prosecution is originally brought. *Groppi v. Wisconsin*, 400 U.S. 505 (1971). The above analysis demonstrating that the defendant, by his actions and those of his counsel and his country on his behalf, waived any jury trial right applies with equal vigor to any venue right the defendant might assert is encompassed within due process notions. *See, e.g.*, Biehl Declaration at paras. 24-26. The defendant wished to be tried in the Netherlands rather than in Scotland, and if he had not waived a Scottish proceeding, a change of venue may have been required in any case to ensure a fair proceeding.

truly required under the *Mathews* test for what process may be appropriate in a given circumstance. That the process employed in this case met the requirements of fair and impartial justice is further demonstrated by the fact that the trial processes generally met—and in some cases exceeded—American due process requirements.

24. *Speedy and Public Trial.* The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." The Lockerbie trial was conducted in a public forum, in the presence of Mr. Megrahi, and the opinion of the trial chambers certainly provides a much more transparent (and, for purposes of the defense's appeal, a more helpful) explanation of the rationale underlying the verdict than a jury verdict normally provides. The Scottish procedure outlined in the Bonnington Declaration also implies that the Scottish system imposes speedy trial requirements akin to federal standards. *Compare* Bonnington Declaration at paras. 22, 38, *with* 18 U.S.C. §§ 3161-3174. Mr. Bonnington indicates that the Crown complied with its speedy trial obligations and that any delay in bringing the case to trial was occasioned by defense counsel's request for continuances. Bonnington Declaration at para. 38. It appears, then, that there is no basis for believing that Mr. Megrahi would have a ground for asserting any constitutional violation on this basis. *See, e.g., Barker v. Wingo*, 407 U.S. 514 (1972) (constitutional speedy trial right not violated in a case involving a five-year delay between arrest and trial); *United States v. Marion*, 404 U.S. 307 (1971).

25. *Confrontation and Compulsory Process Rights.* The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to ... be confronted with the witnesses against him [and] to have compulsory process for obtaining witnesses in his favour." I understand that Mr. Megrahi's counsel fully exercised the defendant's right to cross-examine witnesses. Further, Mr. Megrahi was given the right to secure and put on evidence in his defense.

26. My impression from reading the trial court's opinion was that Mr. Megrahi's counsel used these rights to great effect on his client's behalf. Thus, for example, counsel apparently conducted extensive and effective cross-examination of witnesses. *See, e.g.*, Trial Court Op. at paras. 42-50. In particular, counsel was very effective in persuading the court to discount the evidence of two potentially very important Crown witnesses due to inconsistencies in their testimony. *See, e.g., id.* Further, counsel apparently did a great deal of investigation regarding the technical issues presented and put together alternative theories that the court took very seriously, even if it did not ultimately accept them.

27. The criminal defendant's right to access to evidence also includes in American law a limited entitlement to discovery. According to the declarations I have reviewed, Mr. Megrahi was provided with much more fulsome discovery than would normally be the case in federal criminal trials. Thus, Mr. Biehl avers that the defense was provided with copies of all potentially incriminating and exculpatory documents in advance of trial. Biehl Declaration at para. 22. In addition, the Crown was required to use its best efforts to investigate the location of, and provide defendants access to, witnesses of their choice. *Id.* at para. 20. The trial court also granted the defendants at least two continuances—one during trial--to conduct independent investigations for exculpatory witnesses and evidence. *Id.* at para. 22; *see also* Bonnington Declaration at para. 37.

28. As this Court is well aware, federal constitutional discovery requirements are fairly narrow, encompassing only materially exculpatory information under *Brady v. Maryland*, 373 U.S. 83 (1963) and witness statements as required by *Jencks v. United States*, 353 U.S. 657 (1957). The Biehl and Bonnington Declarations indicate that Mr. Megrahi's defense received both *Brady* and *Jencks* materials. The statutes and rules implementing the *Jencks* decision also require only that the Government provide a limited subset of witness statements to the defense *after* the witness testifies for the government. *See* 18 U.S.C. § 3500; Federal Rule of Criminal Procedure 26.2. The Scottish system appears to allow the defendant to secure the evidence witnesses will offer on the stand *before* trial through the precognition process. *See* Bonnington Declaration at para. 31-33.

29. Indeed, the expectation appears to be that witnesses will make available their evidence to the Crown *and* to the defense in advance of trial. *See id.* at para. 31 (terming a witness's refusal to give a precognition to the defense as a "rare event"). If this expectation should be disappointed, *both* the Crown *and* the defense have the option of forcing the witness to provide his testimony under oath prior to taking the stand. *See id.* at paras. 31-33. This is obviously not required or permitted in most American criminal trials. *Cf.* Federal Rule of Criminal Procedure 15(a)(1) ("A party may move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice."). Access to witness statements—and in particular the power to force reluctant witnesses to talk in advance of trial—is in the American system reserved to the Government. The Scottish system appears to correct this systemic imbalance. It is difficult to overstate the enthusiasm with which American criminal defense counsel would welcome such a system, in which *both sides* are presumed to have a

right to "be roughly aware of what a witness will say and can therefore prepare for examination and cross-examination." Bonnington Declaration at para. 32.

30. It is interesting to note that the Crown apparently turned over inculpatory as well as exculpatory materials in advance of their use at trial. *See id.* at para. 37. These materials would have been available to the defense in advance of trial in U.S. courts only under the Federal Rules of Criminal Procedure, if at all. Finally, Mr. Megrahi's defense was, according to Mr. Bonnington, provided with a witness list "well in advance of the statutory requirement of 10 days." *Id.* at paras. 37, 28. Again, provision of a witness list is not required by American due process standards, and, in my experience, it is not the norm in federal criminal trials. Such an innovation would be cheered by federal defense counsel the country over.

31. In sum, it appears that the discovery provided Mr. Megrahi far outstripped that required by American notions of fundamental fairness, and also significantly exceeded the discovery normally provided in federal courtrooms with which I am acquainted.

32. *Right to the Assistance of Counsel.* The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to ... have the assistance of counsel for his defence." I understand that Mr. Megrahi was appointed Scottish counsel to assist in his defense over a year in advance of trial and that he was also permitted assistance from Libyan lawyers. *See* Bonnington Declaration at para. 38; Biehl Declaration at para. 22. As indicated above, the trial court's evaluation of the evidence indicates that the defense was very prepared, vigorous, and often very effective. *See also id.* (opining that defense counsel were "very talented"). Because the right to counsel is the "lynchpin" upon which the effective exercise of all the other trial rights rests, this conclusion is particularly critical to the due process analysis in this case.

33. *Double Jeopardy Rights.* The Fifth Amendment provides that "[n]o person shall ... be subject for the same offence to be twice put in jeopardy of his life or limb." Mr. Bonnington avers that Scottish criminal law includes a *res judicata* doctrine that appears to be akin to the American bar on double jeopardy. *See* Bonnington Declaration at para. 15. American double jeopardy law is a notorious quagmire because of the many exceptions and qualifications built upon this seemingly simple prohibition. I do not know whether Scottish law contains similar complications. Because Mr. Bonnington's affidavit seems to present this bar in absolute terms, it may well be that Scottish law provides more fulsome (or straightforward) double jeopardy protection.

34. *Right against Self-Incrimination.* Mr. Biehl's affidavit tells us that a defendant in Scottish trials has a right against self-incrimination and, in particular, a right not to take the stand in his own defense. Biehl Declaration at para. 21. Scottish practice may diverge in one respect from American law, but it seems to me a minor variation. Mr. Bonnington states that Scotland continues to follow the rule that used to prevail in the United States requiring the defendant, if he wishes to testify in his own defense, to take the stand before other defense witnesses are heard. Bonnington Declaration at para. 35. In *Brooks v. Tennessee*, 406 U.S. 605 (1972), however, the Supreme Court ruled unconstitutional a Tennessee statute that required a criminal defendant to testify before any other defense testimony had been introduced. "The rule that a defendant must testify first is related to the ancient practice of sequestering prospective witnesses in order to prevent their being influenced by other testimony in the case." *Brooks*, 406 U.S. at 607. Although the Supreme Court no longer allows U.S. courts to achieve this end through hard-and-fast rules about the order in which the defense must put on its case, it does permit the purposes of the rule to be served through prosecutorial comment. Thus, in *Portuondo v. Agard*, 529 U.S. 61 (2000), the Supreme Court held that a prosecutor's comments during summation, calling the jury's attention to the fact that the defendant had had the opportunity to hear other witnesses testify and to tailor his testimony, did not violate the defendant's Confrontation Clause, Fifth Amendment, or Due Process rights. It is my view that *Portuondo* neutralizes any advantage the *Brooks* rule holds for the defense.

35. *Right to a Presumption of Innocence and Proof Beyond a Reasonable Doubt.* Although not contained in express terms in the Bill of Rights, the right to a presumption of innocence and the requirement that the government bears, throughout the trial, the burden of proving the defendant's guilt beyond a reasonable doubt in criminal cases are read into the Due Process Clauses of the Fifth and Fourteenth Amendments. In my opinion, these safeguards are the *most* fundamental requirements of a fair criminal process because they actualize the ideal that "it is better for ten guilty people to be set free than for one innocent man to be unjustly imprisoned." *Furman v. Georgia*, 408 U.S. 238, 367 n.158 (1972) (Marshall, J., concurring) (quoting William O. Douglas, *Foreword*, in J. FRANK & B. FRANK, NOT GUILTY 11-12 (1957)). Thus, the extraordinary burden shouldered by the government in criminal cases has been rationalized by the Supreme Court as follows:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." The standard serves to allocate the

> risk of error between the litigants and to indicate the relative importance attached to the ultimate decision. ...
>
> In a criminal case, ... the interests of the defendant are of such magnitude that historically and without any explicit constitutional requirement they have been protected by standards of proof designed to exclude as nearly as possible the likelihood of an erroneous judgment. In the administration of criminal justice, our society imposes almost the entire risk of error upon itself. This is accomplished by requiring under the Due Process Clause that the state prove the guilt of an accused beyond a reasonable doubt.

Addington v. Texas, 441 U.S. 418, 423-24 (1979) (quoting *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)).

36. Mr. Bonnington avers that, under Scottish law, a defendant is presumed to be innocent, Bonnington Declaration at para. 6, that the burden of proof remains with the Crown throughout the trial, and that the Crown bears the burden of proving the defendant's guilt beyond a reasonable doubt, *id.* at para. 7. Reference to the trial court's judgment demonstrates that the court had these precepts firmly in mind in rendering its verdict. *See* Trial Court Op. at paras. 2, 71 ("[the burden of proof] remains on the Crown throughout the trial and it is therefore for the Crown to prove beyond reasonable doubt that the accused committed the crime charged"), 83, 89.[5]

37. *Right to Appeal.* The U.S. Supreme Court has opined that a defendant has no constitutional right to appellate review. *See, e.g., Jones v. Barnes*, 463 U.S. 745, 751 (1983) ("there is, of course, no constitutional right to an appeal"); *McKane v. Durston*, 153 U.S. 684 (1894). The Supreme Court has held only that "if an appeal is open to those who can pay for it, an appeal must be provided for an indigent." *Jones*, 463 U.S. at 751; *see, e.g., Griffin v. Illinois*, 351 U.S. 12 (1955); *Douglas v. California*, 372 U.S. 353 (1963). Scottish procedure permitted the defendant an appeal as of right. *See* Bonnington Declaration at paras. 41-42. It also makes available what I understand to be collateral review processes. *See* Bonnington Declaration at paras. 43-49. This, then, is another instance in which Scottish criminal procedure provided greater process than is required under American constitutional due process requirements.

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[5] The Scottish system permits three types of verdicts (guilty, not proved, and not guilty) rather than, as in American federal practice, two (guilty and not guilty). Compare Bonnington Declaration at para. 15 *with* Federal Rule of Criminal Procedure 23; *cf. id.* Rule 11 (permitting other types of pleas such as *nolo contendre* and a conditional plea of guilty). I do not believe that this circumstance is particularly relevant to the instant analysis because Mr. Megrahi was convicted. The Scottish rule also strikes me as defense favorable, permitting a defendant two opportunities rather than just one for a favourable result; accordingly, it would seem to reinforce, rather than detract from, a conclusion that Scottish trials are at least as solicitous of the defendant's due process rights as American tribunals.

38. It may be worth noting in conclusion that the Scottish statute providing for an appeal as of right allows the grounds for appeal to rest on "almost any ground" that can be characterized as a "miscarriage of justice." *Id.* at 41. Mr. Megrahi's Note of Appeal and the Appeals Court decision reflected this wide-ranging inquiry. *See id.* Exhs. 4, 10. In this respect Scottish appellate process may permit more expansive review of trial verdicts that is ordinarily available in federal criminal cases. *Cf.* Federal Rules of Criminal Procedure 51 & 52.

39. *Evidentiary Evaluation and Quality of Decision-Making.* Although they are not as central to a due process analysis as the fundamental constitutional rights reflected in the Bill of Rights, the rules of evidence applied in Scottish proceedings appear to be very similar to their counterparts in U.S. law and, indeed, in at least one respect may be much more defense favourable. A review of the trial court's opinion in the case demonstrates, for example, that Scottish courts appear to apply many of the same hearsay rules as do American courts, *see, e.g.,* Trial Court Op. at para. 86 (finding co-conspirator exception to the hearsay prohibition inapplicable where the court acquitted co-conspirator). Mr. Bonnington's affidavit also tells us that the Scottish courts are very protective of the defense in their treatment of evidence relating to a defendant's criminal past or prior bad acts. *See* Bonnington Declaration at para. 7.

40. Perhaps the most important respect in which Scottish evidentiary rules are more protective of criminal defendants is the Scottish requirement that all evidence submitted to prove critical elements of a crime must be independently corroborated—a rule clearly employed by the trial court in this case. *See* Bonnington Declaration at paras. 10-12; *see also* Trial Court Op. at para. 83 ("we turn to consider the evidence which could be regarded as implicating either or both of the accused, bearing in mind that the evidence against each of them has to be considered separately, and that before either could be convicted we would have to be satisfied beyond reasonable doubt as to his guilt *and that evidence from a single source would be insufficient*" (emphasis added)). In federal criminal cases, at least, the so-called "two-witness" rule remains for certain types of perjury prosecutions, *see* 18 U.S.C. § 1621, but it has been eliminated in others, *see* 18 U.S.C. § 1623(e), and is inapplicable in the general run of cases.

41. The trial court also showed great sensitivity to the pitfalls of certain types of evidence that experience demonstrates is among the most unreliable. Thus, the court rejected in major part the inculpatory testimony of a cooperating witness, Mr. Majid, in line with the exhortations often included in American jury instructions to examine the testimony of such

persons with great care. *See* Trial Court Op. at paras. 42-43. The court was also very searching in its evaluation of eyewitness identification evidence and accepted such testimony only to a limited extent. In short, it is my belief, after reading the trial court's opinion (as well as the even more extensive appeals court review of that judgment), that the verdict was based on a careful, dispassionate, and very fair-minded review of the weight and quality of the evidence against Mr. Megrahi. The evidence available to me indicates that the quality of decision-making by three-judge panel was at least equal to, and in all likelihood far surpassed, that which would have been afforded the defendant by a jury.

42. Finally, the overall structure of Scottish criminal trials appears to be very similar to that employed in American courtrooms. *See* Bonnington Declaration at paras. 27-30. The only apparent difference is that there are no opening statements in Scotland. *Id.* at para. 28. This difference is meaningless in terms of due process; indeed, parties are permitted to waive opening statements in many jurisdictions. As the District of Columbia Court of Appeals has noted, "no legal consequence flows from a waiver by the prosecution of its opening statement—a useful event born of tradition but not a legally significant trial step." *Baldwin v. United States*, 521 A.2d 650, 651 (D.C. Ct. of Appeals 1987); *Jackson v. United States*, 515 A.2d 1133 (D.C. Ct. of Appeals 1986).

Conclusion

43. For the above reasons, I respectfully submit my belief that the criminal proceedings in Mr. Megrahi's case met the highest standards of American justice.

Dated this 3d day of June, 2005.

Julie Rose O'Sullivan
JULIE ROSE O'SULLIVAN

SWORN to and subscribed before me
this 3rd day of June, 2005.

Karen G. Bouton (Seal)
NOTARY PUBLIC
My Comm. Expires: Karen G. Bouton
Notary Public, District of Columbia
My Commission Expires December 14, 2005

O'SULLIVAN DECLARATION

EXHIBIT A

JULIE ROSE O'SULLIVAN

Georgetown University Law Center
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Washington, D.C. 20001
(202) 662-9394

EMPLOYMENT:

1994-Present	GEORGETOWN UNIVERSITY LAW CENTER. Professor of Law. Subjects taught: Federal White-Collar Crime, Criminal Justice (basic criminal procedure), Criminal Law, Constitutional Law, International Criminal Law, and Advanced Criminal Procedure. Research and teaching interests: the prosecution function, sentencing, criminal procedure, international criminal law and white-collar criminal practice generally. Awarded 1998 Frank F. Flegal Teaching Award. Recipient of the John Carrol Research Professor of Law Chair for 2000 term
1994	OFFICE OF THE INDEPENDENT COUNSEL, Little Rock, AR. Associate Counsel. Hired by regulatory counsel, Robert B. Fiske, Jr., and worked briefly under statutory counsel, Kenneth Starr, before leaving to join the Georgetown University Law Center faculty. Responsible for various criminal investigations within the overall "Whitewater" inquiry.
1991-1994	UNITED STATES ATTORNEYS OFFICE, SOUTHERN DISTRICT OF NEW YORK, Criminal Division. Assistant United States Attorney. Investigated and prosecuted primarily white-collar offenses.
1986-1991	DAVIS POLK & WARDWELL, N.Y., N.Y. Litigation Associate. Responsible for a variety of civil and criminal defense matters; primarily involved in defense of white-collar criminal cases.
1985-1986	HONORABLE SANDRA DAY O'CONNOR, Associate Justice, Supreme Court of the United States. Law Clerk.

1984-1985 HONORABLE LEVIN H. CAMPBELL, (then) Chief Judge,
U.S. Court of Appeals for the First Circuit.
Law Clerk.

EDUCATION:

1981-1984 CORNELL LAW SCHOOL, J.D., *Summa Cum Laude*, 1984.
Order of the Coif. Senior Note Editor of the *Cornell Law Review*.

1977-1981 STANFORD UNIVERSITY, A.B. with distinction in
International Relations. *Phi Beta Kappa.*

U.S. SUPREME COURT PRACTICE (1995-present):

Appointed by the U.S. Supreme Court to represent petitioner in *Thompson v. Keohane*, 516 U.S. 99 (1995). Wrote petitioner's brief, reply brief, and successfully argued the case.

Submitted *amicus* brief on behalf of approx. 14,000 law students on behalf of respondent in *Grutter v. Bollinger*, 539 U.S. 306 (2003).

Amicus in *Miller-El v. Cockrell*, 537 U.S. 322 (2003) and *Miller-El v. Dretke*, No. 03-9659 (decision pending).

Participated in mooting various Supreme Court cases (and where indicated by an asterisk, commented on briefs or participated in drafting):

United States v. Fanfan, 125 S.Ct. 738 (2005) (for respondent);
United States v. Booker, 125 S.Ct. 738 (2005) (for respondent);
Kowalski v. Tesmer, 125 S.Ct. 564 (2004) (for respondent);
Roper v. Simmons, 125 S.Ct. 1183 (2005) (for respondent);
United States v. Patane, 124 S.Ct. 2620 (2004) (for respondent);
Missouri v. Seibert, 124 S.Ct. 2601 (2004) (for respondent);
Fellers v. United States, 540 U.S. 519 (2004) (for respondent);
Smith v. Doe, 538 U.S. 84 (2003) (for respondent);
Conn. Dep't of Public Safety v. Doe, 538 U.S. 1 (2003) (for respondent);
**Miller-El v. Cockrell*, 537 U.S. 322 (2003) (for petitioner);
Kyllo v. United States, 533 U.S. 27 (2001) (for petitioner);
Richardson v. United States, 526 U.S. 813 (1999) (for petitioner);
Minnesota v. Carter, 525 U.S. 83 (1998) (for petitioner);
**United States v. O'Hagan*, 521 U.S. 642 (1997) (for respondent);
**Kansas v. Hendricks*, 521 U.S. 346 (1997) (for respondent);

United States v. LaBonte, 520 U.S. 751 (1997) (for respondent);
Suitum v. Tahoe Regional Planning Agency, 520 U.S. 725 (1997) (for respondent);
United States v. Hyde, 520 U.S. 670 (1997) (for respondent);
Ohio v. Robinette, 519 U.S. 33 (1996) (for respondent);
United States v. Armstrong, 517 U.S. 456 (1996) (for respondent);
**Whren v. United States*, 517 U.S. 806 (1996) (for petitioner); and
Cooper v. Oklahoma, 517 U.S. 348 (1996) (for petitioner).

RECENT PUBLICATIONS:

Co-authored Casebook, INTERNATIONAL CRIMINAL LAW (in process)

Casebook, FEDERAL WHITE-COLLAR CRIME (West 2d. ed. 2003)

Article, *Some Thoughts on Proposed Revisions to the Organizational Guidelines*, 1 OHIO ST. J CRIM. LAW 487 (2004)

Article, *Professional Discipline for Law Firms? A Response to Professor Schneyer's Proposal*, 16 GEO. J. L. ETHICS 1 (2003)

Article, *The Bakaly Debacle: The Role of the Press in High-Profile Criminal Investigations*, 60 MD. L. REV. 149 (2001)

Article, *The Interaction Between Impeachment and the Independent Counsel Statute*, 86 GEO. L.J. 2193 (July 1998);

Article, *In Defense of the U.S. Sentencing Guidelines' Modified Real-Offense System*, 91 NW. L. REV. 1342 (Summer 1997);

Essay, *The Independent Counsel Statute: Bad Law, Bad Policy*, 33 AM. CRIM. L. REV. 463 (1996).

OTHER:

Guardian *Ad Litem*, District of Columbia Superior Court

Reporter & Commission Member, U.S. SENTENCING COMMISSION'S AD HOC ADVISORY GROUP ON THE ORGANIZATIONAL SENTENCING GUIDELINES (report delivered October 2003)

Co-reporter, AMERICAN BAR ASSOCIATION, STANDARDS FOR CRIMINAL JUSTICE, PLEAS OF GUILTY (3d ed. 1999)

ADMITTED TO PRACTICE:

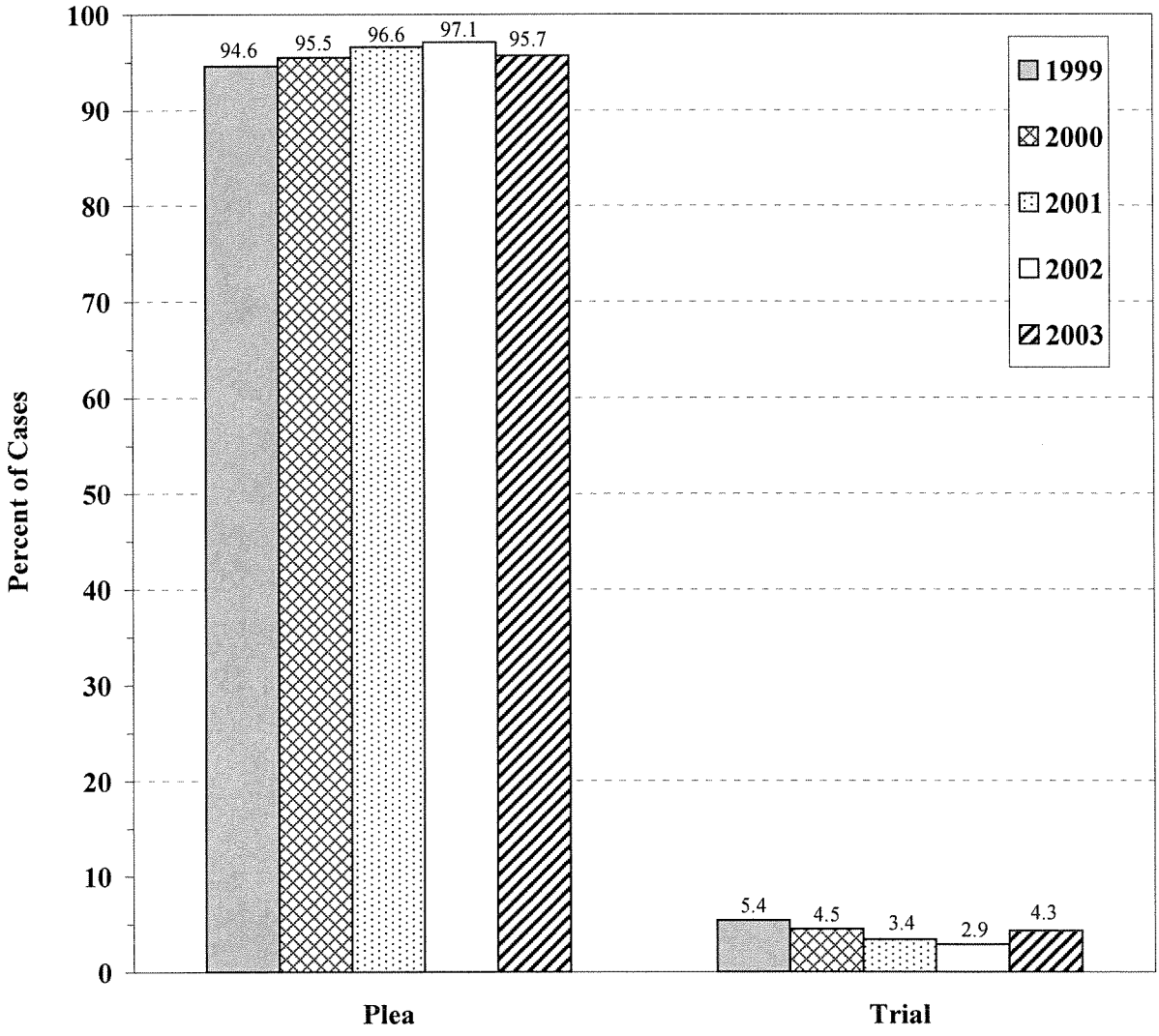
New York
District of Columbia

O'SULLIVAN DECLARATION

EXHIBIT B

Figure C

GUILTY PLEAS AND TRIAL RATES[1]
Fiscal Years 1999 - 2003



[1]Data in this figure represent information from USSC's ongoing data files; therefore, data points may vary from prior Sourcebooks. Descriptions of variables used in this figure are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 1999 - 2003 Datafiles, USSCFY99 - USSCFY03.

Table 5.17

Disposition of cases terminated in U.S. District Courts

By offense, United States, fiscal year 2001

Most serious offense charged	Total defendants	Percent of all defendants convicted	Number of defendants in cases terminated during 2001 who were:								
			Convicted					Not convicted			
						Trial				Trial	
			Total	Guilty plea	Nolo contendere	Jury	Non-jury	Total	Dismissed	Jury[a]	Non-jury
All offenses[b]	77,145	88.8%	68,533	64,894	274	2,313	1,052	8,612	7,621	507	484
Felonies	66,112	91.5	60,467	58,039	23	2,272	133	5,645	5,059	496	90
Violent offenses	2,977	90.3	2,687	2,512	2	164	9	290	240	46	4
Murder, nonnegligent manslaughter	404	86.1	348	304	0	40	4	56	47	7	2
Negligent manslaughter	1	B	0	0	0	0	0	1	1	0	0
Assault	316	81.3	257	229	2	25	1	59	46	12	1
Robbery	1,689	94.1	1,590	1,530	0	57	3	99	84	14	1
Sexual abuse[c]	382	88.2	337	311	0	25	1	45	34	11	0
Kidnaping	163	87.1	142	125	0	17	0	21	20	1	0
Threats against the President	22	59.1	13	13	0	0	0	9	8	1	0
Property offenses	13,950	90.6	12,640	12,124	5	491	20	1,310	1,182	108	20
Fraudulent offenses	11,563	90.8	10,498	10,097	5	380	16	1,065	973	75	17
Embezzlement	933	91.6	855	827	0	27	1	78	72	6	0
Fraud[d]	9,028	90.6	8,180	7,837	5	323	15	848	769	64	15
Forgery	107	92.5	99	93	0	6	0	8	6	1	1
Counterfeiting	1,495	91.2	1,364	1,340	0	24	0	131	126	4	1
Other offenses	2,387	89.7	2,142	2,027	0	111	4	245	209	33	3
Burglary	64	84.4	54	52	0	2	0	10	9	1	0
Larceny[e]	1,591	90.8	1,445	1,378	0	63	4	146	126	17	3
Motor vehicle theft	112	90.2	101	96	0	5	0	11	10	1	0
Arson and explosives	239	83.7	200	181	0	19	0	39	29	10	0
Transportation of stolen property	310	89.0	276	254	0	22	0	34	30	4	0
Other property offenses[f]	71	93.0	66	66	0	0	0	5	5	0	0
Drug offenses	28,227	91.6	25,854	24,889	9	922	34	2,373	2,142	198	33
Trafficking	26,501	91.5	24,253	23,353	7	863	30	2,248	2,030	186	32
Possession and other	1,726	92.8	1,601	1,536	2	59	4	125	112	12	1
Public-order offenses	4,402	87.1	3,836	3,586	3	236	11	566	483	67	16
Regulatory offenses	1,166	84.8	989	951	1	35	2	177	145	27	5
Agriculture	109	80.7	88	79	0	8	1	21	18	2	1
Antitrust	34	94.1	32	32	0	0	0	2	2	0	0
Food and drug	48	89.6	43	40	0	3	0	5	5	0	0
Transportation	128	79.7	102	99	0	2	1	26	14	12	0
Civil rights	87	69.0	60	55	0	5	0	27	15	10	2
Communications	62	95.2	59	56	0	3	0	3	3	0	0
Customs laws	70	85.7	60	56	0	4	0	10	9	0	1
Postal laws	44	77.3	34	33	1	0	0	10	10	0	0
Other regulatory offenses	584	87.5	511	501	0	10	0	73	69	3	1
Other offenses	3,236	88.0	2,847	2,635	2	201	9	389	338	40	11
Tax law violations including tax fraud	484	95.5	462	433	1	25	3	22	16	5	1
Bribery	237	89.5	212	201	0	11	0	25	19	4	2
Perjury, contempt, intimidation	334	83.2	278	243	0	35	0	56	44	9	3
National defense	46	93.5	43	35	0	8	0	3	3	0	0
Escape	497	84.5	420	400	1	18	1	77	75	1	1
Racketeering and extortion	827	83.9	694	627	0	66	1	133	113	18	2
Gambling offenses	25	100.0	25	25	0	0	0	0	0	0	0
Liquor offenses	7	B	7	5	0	2	0	0	0	0	0
Nonviolent sex offenses	498	94.2	469	442	0	24	3	29	27	2	0
Mail or transport of obscene material	11	100.0	11	10	0	1	0	0	0	0	0
Traffic offenses	29	89.7	26	22	0	3	1	3	3	0	0
Migratory birds	4	B	4	3	0	1	0	0	0	0	0
Other felonies[g]	237	82.7	196	189	0	7	0	41	38	1	2
Weapons offenses	5,814	90.0	5,231	4,829	3	363	36	583	508	62	13
Immigration offenses	10,742	95.1	10,219	10,099	1	96	23	523	504	15	4
Misdemeanors[h]	10,952	73.0	7,995	6,789	251	38	917	2,957	2,552	11	394

Note: See Note, table 5.13. These data are from the Administrative Office of the United States Courts' master data files. Only records with cases that terminated during fiscal year 2001 were selected. For methodology and definitions of terms, see Appendix 11.

[a]Includes mistrials.
[b]Includes 81 defendants for whom offense category could not be determined, 71 of whom were convicted, 10 of whom were not convicted.
[c]Includes only violent sex offenses.
[d]Excludes tax fraud.
[e]Excludes transportation of stolen property.
[f]Excludes fraudulent property offenses; includes destruction of property and trespass.
[g]Includes felonies with unclassifiable offense type.
[h]Includes misdemeanors, petty offenses, and unknown offense level.

Source: U.S. Department of Justice, Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2001*, NCJ 201627 (Washington, DC: U.S. Department of Justice, 2003), p. 58.