

**Exhibit C**  
**to the Memorandum of Points and Authorities**  
**(Part 1 of 3)**

**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 DANA D. BIEHL**

I, Dana D. Biehl, declare under penalty of perjury as follows:

Curriculum Vitae of Declarant

1. In May, 1974, I graduated from Arizona State University College of Law.
2. After graduation, I joined the U.S. Department of Justice's Criminal Division through the Honors Graduate Program, as a trial attorney. I began my career in the Narcotic and Dangerous Drug Section. I spent most of my early years on the road and I prosecuted federal narcotics cases in ten different federal districts during these years.

3. In 1978 and 1979, I was in charge of a three prosecutor narcotics task force in Miami, Florida. In this assignment I prosecuted several cases through jury trial including a six month thirteen defendant Rico and CCE case for which I was awarded the Department of Justice Distinguished Service Award.

4. I served as Litigation Supervisor of the Narcotic and Dangerous Drug Section in 1980 and Deputy Chief of the Section in 1982.

5. In 1983 through 1985, as a result of a request from the Governor of Puerto Rico to the Attorney General, I investigated and prosecuted, through several jury trials, numerous high level corrupt police officials in Puerto Rico.

6. In 1986 and 1987, I was an Assistant United States Attorney in Boise Idaho and the OCEDEF Chief. I prosecuted several Narcotic trials in this position.

7. In 1990, I was appointed to Special Counsel and Chief of Staff to the Assistant Attorney General, Criminal Division.

8. From 1991 to 1997, I served as the Deputy Chief for International Terrorism in the Terrorism and Violent Crime Section of the Department of Justice. My duties included the supervision and coordination of international terrorism investigations and prosecutions. I also carried a case load including the investigation and indictment of the bombing of Pan Am 103 over Lockerbie Scotland.

9. From 1999 until 2000, I was detailed to the Crown Prosecution Office of Scotland as a member of the Lockerbie prosecution team at Kamp van Zeist in the Netherlands.

10. From October, 2003 to October, 2004, I served as the Legal Advisor to the Central Criminal Court of Iraq, founding and building a national criminal court for that country.

11. I am presently a Senior Litigation Counsel in the Counterterrorism Section (formerly the Terrorism and Violent Crime Section). A copy of my *curriculum vitae* which was prepared in 2003 for the assignment in Iraq is attached as Exhibit 1.

12. As one of the U.S. prosecutors on the team that investigated the bombing of Pan Am Flight 103 over Lockerbie, Scotland, I am familiar with all facets of the United States and Scottish investigation into the bombing including all potential witnesses and evidence which has been discovered. In 1989, I was assigned responsibility, along with Assistant United States Attorney Brian Murtagh from the District of Columbia, for the Grand Jury's investigation into the bombing of Pan Am Flight 103 over Lockerbie Scotland. We presented the evidence and the U.S. indictment returned by the Grand Jury in November 1991, charging Abdel Bassett Ali Mohammed Al-Megrahi and Al-Amin Khalifa Fhimah with

the bombing of Pan Am Flight 103. The indictment is attached as Exhibit 2. I have continued to have responsibility for United States v. Megrahi and Fhimah, Criminal Case No. 91-0615 (D.D.C. 1991). As a result of my work on the Pan Am Flight 103 investigation and trial, I was awarded the Attorney General's Award for Distinguished Service in 2001.

13. Brian Murtagh and I also represented the United States' interest and provided direct support to the Scottish prosecution of Al-Megrahi and Fhimah. For over 10 years, I participated in the U.S. and Scottish investigation of the Pan Am Flight 103 bombing. I interviewed witnesses and reviewed all potential exhibits and evidence. I also directly participated as part of the Scottish Crown Office Trial Team in the criminal proceedings at Kamp van Zeist in the Netherlands. I attended every minute of testimony in the Scottish criminal prosecution and I reviewed transcripts of the proceedings daily. I am very familiar with the prosecution and the due process rights afforded Al-Megrahi and Fhimah.

14. This affidavit is based both on my expertise in U.S. federal criminal law and procedure and my personal experience and observations of the criminal proceedings brought by Scottish authorities against Al-Megrahi and Fhimah at Kamp von Zeist in the Netherlands.

#### Scottish Criminal Proceedings

15. Following a long and extensive trial on the merits, a three judge panel of the Scottish High Court of Justiciary issued an 82-page decision finding Abdel Bassett Ali Mohammed Al-Megrahi guilty of 270 counts of murder for his role in the bombing of Pan Am Flight 103 over Lockerbie Scotland. A copy of the decision is attached as Exhibit 3. The Court found that "the conception, planning and execution of the plot which led to the planting of the explosive device was of Libyan origin." Exhibit 3, at 75.

16. The trial court concluded that "We accept the evidence that [Megrahi] was a member of the JSO [Jamahiriya Security Organization], occupying posts of fairly high rank. One of these posts was head of airline security, from which it could be inferred that he would be aware at least in general terms of the nature of security precautions at airports from or to which LAA [Libyan Arab Airlines] operated. He also appears to have been involved in military procurement." Exhibit 3, at 80.

17. Following appellate arguments held at Kamp van Zeist from January 23 to February 14, 2002, a five-judge panel of the Appeal Court, High Court of Justiciary entered a 200-page opinion denying Megrahi's appeal. Attached as Exhibit 4. The basis of the appeal was not on whether there was sufficient evidence to convict. In fact, Megrahi's counsel "accepted that there was a sufficiency of evidence [to support a conviction]." See Scottish Appellate Decision, Exhibit 4 at 200. The appeal concerned the trial court's treatment of evidence submitted by the defence. *Id.*

### Procedural Due Process

18. Defendants in a Scottish criminal proceeding are afforded as great, and in some instances, greater due process protections than those afforded to defendants in the United States.

19. Under Scottish law, a defendant is presumed innocent until proven guilty. The burden of proof in all criminal proceedings rests with the prosecution and they must meet the burden of proof beyond any reasonable doubt. This burden of proof rests with the prosecution throughout the criminal proceedings.

20. Under Scottish law and in this case, the defendant's pretrial discovery rights to examine all of the evidence included all the rights granted by the Federal Rules of Criminal Procedure and many important additional rights. For example, defendants were granted the right to have the government use its best efforts to locate and provide for defence interview of all witnesses and potential witnesses in the case.

21. As in the United States, an accused has a right to cross examine witnesses at trial presented by the prosecution. A defendant in Scotland also has the right to remain silent and to refuse to testify. A defendant may call witnesses in his defence.

22. Both Megrahi and Fhimah were appointed very talented Scottish lawyers to assist in their defence. Megrahi and Fhimah were also permitted assistance from Libyan lawyers. The defendants were provided copies of all potential incriminating and exculpatory documents in advance of trial and they were granted at least two continuances in order to conduct independent investigations for exculpatory witnesses and evidence. One such continuance was granted during the trial.

23. It was imperative to Scottish and U.S. authorities, that Megrahi and Fhimah were afforded all due process protections under Scottish law. To the best of my knowledge and experience, these due process protections were afforded in every respect.

### Waiver of a Jury Trial

24. There was one departure from standard Scottish criminal procedure. Under Scottish criminal law, an accused is to be tried by a jury of 15 and the proceedings are to be conducted before a single judge of the High Court of Justiciary. The Libyan government, however, refused to extradite Megrahi and Fhimah unless they could be tried to a panel of judges outside of Scotland or the United States. *See*, Position Paper of Libya (1997). Eventually an agreement was reached between the governments of the United Kingdom, United States and Libya. The parties agreed that the trial would be held at Kamp van Zeist in

the Netherlands before a panel of three Scottish Judges of the High Court of Justiciary. This agreement was approved by the United Nations.

25. In order to fulfill the Agreement between Libya and the United Kingdom, a Special Order of Council was entered by the government of the United Kingdom to arrange for Megrahi and Fhimah to be tried before a three-judge panel instead of a jury and for the proceedings to be conducted in the Netherlands. *See*, Order of Council, S.I. No. 1998/2251 (1998).

26. In the Scottish case, not only did the government and the court accept the waiver, but a special Order of Council was entered and approved by the UN to accommodate Megrahi's concern about not receiving a fair trial in Scotland or the United States. Megrahi could have extradited himself at any time to Scotland, and he could have received a jury trial there. It was only after lengthy negotiations by Libya on his behalf, that an agreement was reached to concede to Libya's demand granting Megrahi a trial before a three judge panel, instead of a jury, in the Netherlands.

27. Furthermore, counsel for Megrahi maintained throughout the preliminary hearings that his client had the option to select a jury in Scotland rather than proceed before the three judge panel. Megrahi's lawyer, however, never filed a motion or sought a trial by jury. Lastly, Megrahi never asserted that his conviction should be overturned because he was not afforded a trial by jury.

#### Corroboration of Evidence

28. One fundamental difference between criminal procedure in Scotland and in the United States is that under Scottish law all evidence submitted to prove critical elements of a crime must be independently corroborated. *See*, Declaration of Alistair J. Bonnington, at ¶¶ 10-14. As is described in detail by Alistair J. Bonnington in his affidavit, as a general rule, eyewitness testimony alone would be an insufficient basis from which a judge or jury may convict an accused. *Id.* Under Scottish law, the eye-witnesses' testimony must be supported or confirmed by independent evidence such as another eyewitness or some piece of physical evidence. *Id.* The rule for the corroboration of evidence is a much higher standard than that in the United States. For instance, in the United States, an individual may be convicted based solely on the testimony of a single eyewitness.

29. Prosecutors offered into evidence Fhimah's personal diary which contained evidence of Fhimah's alleged involvement in the plot to bomb Pan Am Flight 103. The information contained in the diary against Fhimah could not, however, be independently corroborated by evidence from a separate source. As a result, evidence of the existence of the diary could not be used by the Court to assess Fhimah's guilt or innocence. *See*, Trial Court

Opinion, Exhibit 3, at p. 86. In addition, the diary could not be used against Megrahi because the Court held "[t]he [diary] entries fall to be treated as equivalent to a statement made by a co-accused [without] the presence of the first accused." *Id.*

Scottish Criminal Trial Procedure Compared to U.S. Criminal Procedure

30. I have served as a Federal prosecutor with the Department of Justice for over 30 years. Throughout this period, I have developed an expertise in federal criminal procedures and the protections afforded criminal defendants in the United States. Through my assignment to the Scottish Crown Office for the prosecution of the Lockerbie trial, I am familiar with Scottish criminal procedures and the protections specifically afforded to Megrahi and to Fhimah in their criminal prosecution.

31. Based on what I observed and my expertise in criminal procedure, in my opinion, Megrahi and Fhimah were afforded all due process protections under Scottish Law and those protections are as great and, in many cases, greater than the protections afforded criminal defendants in the United States District Courts.

Dated this 2nd day of June, 2005.

Dana D. Biehl  
DANA D. BIEHL

SWORN to and subscribed before me  
this 2nd day of June, 2005.

Valerie J. Jackson (Seal)  
NOTARY PUBLIC  
My Comm. Expires: 2/29/09

**Exhibit 1**  
**(Declaration of Dana D. Biehl)**



**DANA D. BIEHL**  
Criminal Division  
Counterterrorism Section  
United States Department of Justice  
*dana.biehl@usdoj.gov*  
202-514-1079

**EXPERIENCE**

**United States Department of Justice**

Presently	Counterterrorism Section (formerly the Terrorism and Violent Crime Section), Criminal Division, as Litigation Counsel - My duties include the investigation and trial prosecution of cases, special projects for the Section Chief and Regional Anti-Terrorism Task Force Coordinator.
1999 - 2000	Detailed to the Crown Office of Scotland as a member of the Lockerbie prosecution team in the Netherlands.
1991 - 1997	Terrorism and Violent Crime Section as Deputy Chief for International
Terrorism	My duties included the supervision and coordination of international terrorism investigations and prosecutions. I also carried a case load including the investigation and indictment of the bombing of Pan Am 103 over Lockerbie, the murder of a U.S. Army corporal in Panama, the bombing of the Marine barracks at the U.S. Embassy in La Paz, Bolivia, and the bombing of OPM SANG in Riyadh, Saudi Arabia. I investigated these cases on the ground in country. I worked with the State Department Counterterrorism Office on inter-national coordination of counterterrorism issues. This took me to six

continents and about fifty countries.

- 1990 Special Counsel and Chief of Staff to the Assistant Attorney General, Criminal Division
- 1988 - 1989 General Litigation and Legal Advice Section, Criminal Division, as Trial Attorney - My duties included the investigation of a major environmental case in Louisiana and the investigation and indictment of the murder of four U.S. Embassy Marine guards in San Salvador, El Salvador.
- 1986 - 1987 United States Attorney's office, District of Idaho, as Assistant United States Attorney and Chief of the Organized Crime Drug Enforcement Task Force - This was a joint task force with the FBI, DEA, IRS, the Idaho State Police and several police forces.
- 1983 - 1985 General Litigation and Legal Advice Section, Criminal Division, as Trial Attorney - I spent this entire tour investigating and prosecuting police corruption cases in Puerto Rico.
- 1982 Narcotics and Dangerous Drug Section, Criminal Division, as Deputy Chief - At that time the Section had 30 lawyers and one deputy. I supervised litigation and did administration and interagency coordination.
- 1980 - 1981 Narcotic and Dangerous Drug Section as Litigation Supervisor
- 1978 - 1979 Narcotic and Dangerous Drug Section as lead prosecutor for Operation Banco, Miami, Florida - I was in charge of a three prosecutor office

with one DEA enforcement group and one FBI enforcement group.

1974 - 1977

Narcotic and Dangerous Drug Section as Trial Attorney - I spent most of these years on the road and I tried cases in ten districts during this period. I came to the Division in the Honors Graduate Program

**MILITARY SERVICE**

**United States Army**

Highest Rank: 1<sup>st</sup> Lieutenant

Schools Attended: Officer Candidate School

Positions: Artillery Forward Observer, stints as an Infantry Platoon Leader, Viet Nam and Cambodia: Battery Executive Officer, Ft. Lewis, Washington

Awards: Four Bronze Stars for Valor, Purple Heart, two Air Medals, Army Commendation Medal, several lesser awards

**LEGAL EDUCATION**

Arizona State University College of Law  
Juris Doctor 1974  
Top 15 percent