

U.S. FOREIGN POLICY TOWARD LIBYA

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BEFORE THE
SUBCOMMITTEE ON NEAR EASTERN AND
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THURSDAY, MAY 4, 2000

U.S. SENATE,
SUBCOMMITTEE ON NEAR EASTERN
AND SOUTH ASIAN AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room SD-419, Dirksen Senate Office Building, Hon. Sam Brownback (chairman of the subcommittee) presiding.

Present: Senators Brownback and Torricelli.

Senator BROWNBACK. The hearing will come to order.

Ambassador Neumann, welcome. Pleased to have you here.

I think it would be appropriate at the very outset of this hearing if we would just have a moment of silent prayer for the victims of Pan Am 103 and the trial that goes on today and for their families. So, if you would join me in that moment, I would appreciate it.

[A moment of silence observed.]

Senator BROWNBACK. Thank you.

We are here today to discuss the question of U.S. policy toward Libya. To be frank, I would have thought there would be little to say on this matter at this point in time. We have got a trial that has begun on the case of Pan Am 103 just yesterday. As yet, there is no official decision on the question of who is responsible for the murder of 270 people, including 189 Americans.

There is also a trial ongoing in Germany in the 1986 La Belle Disco bombing which killed two American servicemen. As with Pan Am 103, the Government of Libya is suspected in the attack.

Unfortunately, rather than the icy cold hostility, which I would have expected from the U.S. Government toward Libya at this point in time, I perceive the slow warming of relationships with Libya. A couple of months ago, there was a mission from the Department of State to Libya to see if the travel ban should be lifted. Now perhaps the legal basis for the travel ban no longer exists. I cannot say, but I can say one thing for sure: Nothing has changed in the last year that would justify sending this message other than a change of heart in Washington. Qadhafi is the same dictator he ever was.

Why would the Clinton administration want to send any signal to the Qadhafi regime that we are in any way satisfied with its conduct? Qadhafi has expressed no regret for the death of 270 men, women, and children. He has taken no responsibility. To the contrary, he has made comments indicating that he believes the world is coming around to his position.

It is true the Clinton administration has not gone as far as many European governments who seem unfazed by terrorists murdering scores of their own citizens. On the other hand, I am very much concerned there is a lack of commitment to finding and punishing the murderers in this world. I am very much afraid, in fact, that the Clinton administration and the United Nations would like this trial at Camp Zeist to be the end of the road.

Indeed, though Secretary of State Albright has gone out of her way to assure that that is not the case, I have some suspicion that the Secretary General of the United Nations may well have told Colonel Qadhafi that he need not fear from this trial in The Netherlands. It will not destabilize his government. If that is not the case, why will the Secretary General and the Secretary of State not release the contents of Mr. Annan's letter to Colonel Qadhafi cajoling him into cooperating in the trial now taking place. How, I wonder, could a finding that the Government of Libya planned and ordered its operatives to execute the downing of Pan Am 103 do anything but destabilize the Qadhafi regime?

The more I think about this, the more troubled I get. We are not talking about anything abstract. We are talking about the wanton murder of men, women, little children, and babies. Think of them. Think of their families, the grief that they go through and the constant torment that they have. The 189 American families deserve for their Government to be relentless in hunting down the terrorists who so horribly killed their loved ones.

Now maybe, Ambassador Neumann, you will have a different story to tell. I hope so. What I want to get at here today is where is the administration going with policy toward Libya. Why is it moving, if it is moving, at this time with these trials undergoing at the present time? This seems to be happening in many places around the world, but I want to focus today on what is taking place in Libya.

So, I look forward to your testimony. I think there will be some other members joining us as we go along. Then I have a number of questions that I would like to ask you as well. Thank you for joining us today.

STATEMENT OF HON. RONALD E. NEUMANN, DEPUTY ASSISTANT SECRETARY OF STATE FOR NEAR EASTERN AFFAIRS, DEPARTMENT OF STATE, WASHINGTON, DC

Ambassador NEUMANN. Thank you, Senator Brownback. I appreciate the invitation to speak to you on current U.S. policy toward Libya and I welcome the opportunity to address a topic of interest to many members. We have achieved a significant success in meeting long-established goals, but this is a continuing story whose ending is as yet unclear.

U.S. policy and policy goals vis-a-vis Libya have remained consistent through three administrations. Our goals have been to end Libyan support for terrorism, prevent Tripoli's ability to obtain weapons of mass destruction, and contain Qadhafi's regional ambitions. Since Lockerbie, we have added additional aims, including bringing the persons responsible to justice. I would like to discuss current developments in the context of U.S. policy goals and unilat-

eral and multilateral efforts on behalf of these goals and consider what remains to be done.

Prior to the Qadhafi regime, we enjoyed a generally warm relationship with the Libyans and pursued policies centered on our interests in operating at Wheelus Air Force Base with its 4,600 Americans, the considerable U.S. oil interests, and other key issues.

After Qadhafi's 1969 coup, the relationship quickly soured. Concerns about Libya's foreign policies came to dominate our policy-making. Chief among these concerns are state sponsorship of terrorism, support for groups violently opposed to Israel and the peace process, preventing of Tripoli's efforts to obtain weapons of mass destruction, and unhelpful activities in neighboring African states. Since that time, the U.S. policy agenda toward Libya has focused on these concerns.

Although our commercial relationship with Libya flourished throughout the 1970's, the political relationship deteriorated, marked by confrontation and by intermittent reconciliation attempts on both sides. In the 1980's, we ended the longstanding commercial relationship and rejected any possibility of reconciliation so long as Libya pursued its policies of concern. We imposed sanctions piece-by-piece in response to Libyan support for terrorism, beginning with the disapproval of all further military sales to Libya and the designation of Libya as a state sponsor of terrorism in 1979. We ultimately imposed comprehensive sanctions on all commercial and financial transactions with Libya under an Executive order in 1986. The unilateral sanctions regime against Libya has remained one of the most comprehensive.

Also, in 1986, we identified Libya as being responsible for the La Belle Disco bombing and in retaliation bombed select military and terrorist-related targets in Tripoli and Benghazi. Our judgment on Libyan responsibility for that bombing was recently given additional credibility by new testimony in the Berlin trial of the La Belle bombing suspects.

In the wake of the La Belle bombing, our European allies finally began to coordinate efforts against Libya. The EU resolved to reduce Libyan diplomatic presence abroad, embargo arms sales to Libya, and encourage policy and security cooperation against Libyan support for terrorism.

We obtained U.N. Security Council support against Libya for its sponsorship of terrorism following evidence of Libyan involvement in the tragic 1988 Pan Am 103 and 1989 UTA 772 bombings. In 1992 and 1993, the Security Council passed a series of resolutions calling on Libya to surrender the suspects, accept responsibility for the actions of its officials, pay appropriate compensation, disclose all it knew of the crime, and cooperate with the criminal investigation, cease all forms of terrorist action and assistance to terrorist groups, and prove its renunciation of terrorism by concrete actions. The Security Council imposed civil aviation, financial, and diplomatic sanctions against Libya.

Carefully targeted U.N. sanctions against Libya were for many years one of the most successful multilateral sanctions regimes. Rigorously observed sanctions succeeded in isolating Libya and limiting its access to dollars and other hard currencies for almost a

decade. However, 2 years ago, support for the international sanctions began to fade. Deliberate violations by some states were increasing. We found little support to upgrade or even maintain the international sanctions.

For 10 years, the United States made every effort to bring the perpetrators of the terrorist bombing of Pan Am 103 to justice. Libya's surrender of the Pan Am 103 suspects came as a result of our intensive efforts to bring them to trial. Beginning in the fall of 1997, along with the British and the Dutch, we developed a detailed plan for a trial before a Scottish court seated in The Netherlands. After we unveiled the plan in August 1998, the U.N. Security Council unanimously endorsed the initiative and again urged Libya to surrender the suspects. International opinion welcomed this proposal. Libya finally turned over the suspects under the terms we had laid out. The U.S. engaged in no negotiations and placed no restrictions on the prosecutors' freedom to follow the evidence. The Scottish trial in The Netherlands will be a genuine criminal proceeding, conforming with the rules and traditions of Scottish jurisprudence, and the prosecution will follow the evidence wherever it leads. Since the Libyan suspects' surrender, they have awaited trial in a Scottish jail in The Netherlands. The trial began yesterday and is expected to take some time.

Over time, faced with the U.N. and the U.S. sanctions, as well as the attendant political isolation, Libya has reduced its support for terrorism and sought to distance itself from terrorist groups. As reported in *Patterns of Global Terrorism* for the last 2 years, Libya has not been implicated in any international terrorist act for several years and has taken important steps.

Libya has expelled the Abu Nidal Organization, uprooting its infrastructure and seeking to eliminate any ANO presence in Libya. It has cooperated with other intelligence services in the region to deport remaining ANO members from Libya. Ironically, the ANO has publicly threatened terrorist retaliation against Libya.

In addition to withdrawing its support from Palestinian groups that oppose the peace process, Libya has thrown its support to Chairman Arafat and the Palestinian Authority. The Libyan Government has told all Palestinians that the Palestinian Authority is the only address for their concerns. Given Libya's status as one of the original Arab radical states, this support for the Palestinian Authority represents an historic policy shift toward peace that we should all welcome.

In the last year, Libya has imposed visa restrictions to limit the ability of terrorists to enter its territory as a haven.

Libya has also cooperated with Egypt, Jordan, and Yemen against terrorist groups. In the context of the Arab League Interior Ministers agreement to cooperate on counter-terrorism, we have seen the extradition of a number of suspected terrorists between Libya and Jordan and Libya and Yemen.

While we recognize the positive steps Libya has taken, a number of issues remain on which Libya must act. One key question is what else remains for Libya to do on terrorism to show that the break is permanent and not just opportunistic. Libya should comply with the U.N. Security Council resolutions, including payment of appropriate compensation, acceptance of responsibility for the ac-

tions of its officials, renunciation of and an end to support for terrorism, and cooperation with the Pan Am 103 trial and investigation. In October 1999, Libya allowed the Scottish investigators to travel to Libya and obtain access to requested witnesses and documents. We will insist that any similar future request be granted and that Libyan witnesses be able to testify in The Netherlands unimpeded. Such Libyan cooperation is an explicit U.N. Security Council requirement before U.N. sanctions are lifted. It is also a concrete way for Libya to demonstrate that it has changed its policy, not just its rhetoric on terrorism.

We want to see Libya sever all remaining ties with and support for terrorist groups. That would include terminating all contacts, travel on Libyan soil, and financial assistance. We also seek clear and concrete Libyan support for the peace process, including the underlying principles of the Madrid process. Such steps would be a concrete, definitive way for Libya to demonstrate its abandonment of violent opposition to the peace process and cessation of its support for opponents of peace. In this regard, we are closely watching Libya's talks with the EU and possible participation, with Israel and the Palestinian Authority, in the Barcelona process. Looking to the future, we would like Libya to join and comply with certain international anti-terrorism conventions, which it has indicated a willingness to do.

We remain concerned about Libyan programs to develop weapons of mass destruction and missile delivery systems. British authorities at London's Gatwick Airport recently intercepted Scud missile parts interdicted at Gatwick bound for Libya. We seek to prevent Libya's efforts to acquire weapons of mass destruction [WMD] and delivery systems and encourage other countries to do the same. Multilateral efforts to contain these Libyan programs have thus far achieved substantial success. We would like to see Libya join the Chemical Weapons Convention and comply with the CWC and the Biological Weapons Convention. These actions would signal its seriousness of purpose and be an important, concrete step toward responsible behavior.

Libya's recent record on intervention outside its borders is less clear and requires close attention. Libya continues to be deeply engaged in Africa, including Sierra Leone, Congo, Ethiopia-Eritrea, and Sudan. We want to see it play a constructive role. For example, Libya has joined with Egypt to push for a negotiated resolution of the longstanding conflict in Sudan. We support the mediation efforts led by East African states under the Inter-Governmental Authority on Development, because its Declaration of Principles spells out the key issues which must be resolved for the achievement of a just, lasting settlement. At the same time, we have stepped up efforts to cooperate with Egypt in the search for peace as a single, unified process stands the best chance of achieving a settlement in the Sudan. However, given the long history of dangerous intervention by Libya outside its borders, as well as more recent reports of providing arms throughout the region, we will continue to take steps to ensure that Libya seeks to resolve, rather than aggravate, regional conflicts.

There has been intense press speculation and some congressional interest about possible changes to travel-related restrictions for

Libya. In March, the Secretary authorized a consular trip to Libya for the specific, limited purpose of assessing whether there continues to be an imminent danger to U.S. travelers. An imminent danger was the factual, legal basis for imposing a restriction on the use of U.S. passports for travel to, in, or through Libya in 1981. Based on all reports, we believe it was appropriate to assess the situation on the ground for ourselves. The Department is still reviewing the trip findings, as well as other relevant information, including reports from European diplomats, our protecting power, and travelers to Libya. Speculation about the outcome of this review would be premature; however, knowing of your interest in the matter, we will continue to stay in close touch with you on this issue.

On our key concerns, terrorism, opposition to Middle East peace, regional intervention, Libya no longer poses the threat it once did. On WMD and missiles, our efforts to impede Libya's programs have had substantial success. That said, we must continue to watch Libya closely and will maintain pressure until all of these concerns are fully addressed. Our goal continues to be to deter Libyan policies of concern. An improved bilateral relationship is not in itself an end. We will oppose lifting U.N. sanctions against Libya until we are satisfied that Libya has met all the relevant U.N. Security Council requirements. The provisions of the Iran and Libya Sanctions Act regarding investment in Libya's petroleum sector will continue to be considered until, as the statute prescribes, the President has determined and certified to Congress that the U.N. Security Council resolution requirements have been met. Also until that time, we expect to maintain core unilateral economic sanctions prohibiting U.S.-Libyan business.

Again, I would like to thank you, Mr. Chairman, for this opportunity to appear in front of the subcommittee on these important issues and welcome the opportunity to address any specific questions you might have.

[The prepared statement of Ambassador Neumann follows:]

PREPARED STATEMENT OF HON. RONALD E. NEUMANN

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On our key concerns—terrorism, opposition to Middle East peace, and regional intervention—Libya no longer poses the threat it once did. On WMD and missiles, our efforts to impede Libya's programs have had substantial success. That said, we must continue to watch Libya closely and will maintain pressure until all of these concerns are fully addressed. Our goal continues to be to deter Libyan policies of concern. An improved bilateral relationship is not, in itself, an end. We will oppose lifting U.N. sanctions against Libya until we are satisfied that Libya has met all the relevant U.N. Security Council requirements. The provisions of the Iran and Libya Sanctions Act regarding investment in Libya's petroleum sector will continue

to be considered until, as the statute prescribes, the President has determined and certified to Congress that the UNSCR requirements have been met. Also, until that time, we expect to maintain core unilateral economic sanctions prohibiting U.S.-Libyan business.

Again I would like to thank you, Mr. Chairman, for this opportunity to appear in front of the subcommittee on these important issues, and would welcome the opportunity to address any specific questions you might have.

Senator BROWNBACK. Thank you, Ambassador. I appreciate the statement.

Libya remains on the official list of state sponsors of terrorism? Is that correct?

Ambassador NEUMANN. They do remain on the list. It just came out last week or Monday? Last week. The list came out again. It is an annual report and Libya still figures on the list.

Senator BROWNBACK. So, it is still in our estimation a state sponsor of terrorism. Is that correct?

Ambassador NEUMANN. It is still a state sponsor of terrorism, Mr. Chairman, although it has not participated, so far as we know, in any active act of terrorism in the last couple of years.

Senator BROWNBACK. In March, the Secretary of State announced that she was sending a team to Libya to review the ban on travel of U.S. citizens. Now, this was seen by the Libyan Government and by a number of U.S. citizens as an overture that could lead to a warming of relations. I know the State Department has since said the travel ban review has nothing to do with the Pan Am trial or with the OPEC meeting that was soon coming up in Vienna. But can you explain why, after the ban was put in place in 1981, the administration decided to review it just weeks before the trial and just a week ahead of this OPEC meeting?

Ambassador NEUMANN. Yes, Mr. Chairman, I kind of thought you might ask that question.

The ban—it is actually not a ban. It is a restriction on the use of passports, but that is a technical issue. The law on this is fairly specific and has made the point that Americans' freedom to travel is to be restricted only for reasons of security, which includes the existence of a state of war between the United States and the country in question, ongoing armed conflict, or the threat of imminent danger to American citizens. It is not a sanction as the rest of the unilateral or multilateral sanctions are.

In the very long period of our strained lack of relations with Libya, we have considered regularly that there was a threat to Americans who traveled in Libya, or could be, because of the behavior of the Libyans. Over the last year or 2, as Libyan policy on terrorism has altered, particularly after the suspected Pan Am 103 bombers were turned over and the number of foreign travelers increased, the evidence and the record of what was happening in Libya seemed to us to call into question whether we were acting consistent with the intent of that law.

That question came up initially back in November when the Secretary renewed the restriction. The restriction has to be renewed every year or it expires. She looked at it then but felt that we still did not have a clear picture. The question continued to reoccur. The trial obviously is going to go on for a very long time, possibly a year or more. I do not know that there is going to be a perfect time, nor is there a decision yet. But the Secretary has treated this as a very

serious question and felt that she did have to look at the intent, as we understood it, of not restricting Americans' freedom to travel for political purposes unless there was a question of safety. But she felt that she also wanted an on-the-ground appraisal, and she sent the consular team to get it. They have come back. That report is still being considered. It is still under review in the Department.

Because of the nature of the statute, we did not consider it as part of the sanctions regime. It is not. We do not consider it as a political signal to Libya. The Libyans are happy to make whatever they can out of it. We were very careful in the team as well. We sent only consular and security officials. We sent nobody who has a political brief or responsibility, nor did we discuss political subjects with the Libyans.

Senator BROWNBACK. I thought you would answer that way as well with the question that I had.

The travel ban has been in place for nearly 20 years. The administration has great discretion on when it considers these sorts of matters. The timing of this seems quite either odd or insensitive given the trial taking place at this point in time. I would sure hope that the administration's discretion and consideration of this would also take into consideration these other factors because you could have considered this anytime that the administration has been in office, and here you are just within weeks of the trial, of the OPEC meeting. It seems either odd or insensitive.

I want to focus you on another question. The administration has stated that Qadhafi did not receive assurances from the U.S. or the U.N. that prosecutors in the upcoming trial would focus only on the two accused and not possible Libyan Government involvement in the bombing.

At the same time, the administration has refused to release a letter from Kofi Annan to Qadhafi to the Members of this body or to family members that have been impacted. When can I assure the victims' family members present here today that this letter will be released?

Ambassador NEUMANN. Thank you, Mr. Chairman. I thought we would get that question also.

The letter I think belongs in a context. First of all, as I have said, we have made no deal. There is nothing which prohibits the prosecutors from following the evidence wherever they want to go.

Just to pause for a moment, remember when the resolutions were passed, we still had to convince Libya and the United Nations had to convince Libya to turn over the suspects. Now, we have a pretty clear idea in this country and in Great Britain what we mean by a fair trial. I have no particular reason to believe that Colonel Qadhafi, who has probably never seen a fair trial, let alone participated in one, has any similar conception of jurisprudence. And the questions which were coming back through the United Nations, which we had asked to be the intermediary to try to get these people out, suggested a near paranoia that they would be used or manipulated in some form of Stalinist type of show trial.

What we said in public and what we said to the Secretary General were two things, and we were quite explicit and kept them quite distinct. One was that we would not use these people for political purposes. That meant we would not use them as part of

some political circus, some Stalinist type of show trial. And the other statement we made, which was also true and also correct, was that the prosecutors were free to follow the evidence wherever it led. There was no deal and there was no restriction on them. That eventually satisfied the Libyans and they turned over the two suspects.

Now, the letter itself is a U.N. document, a document of the Secretary General. We have to work with the Secretary General on a whole variety of issues, and confidentiality respecting his documents and his request is part of that. We have not objected ourselves to turning over the letter, but it is his letter. We also have had people from the administration briefing both Members and staff on the contents of that letter, and we can do more of that. I know that the Secretary General has also been asked directly by a Member of Congress if he would hand the letter over and he declined to do so.

I do not think it is probably the practice of Members generally to hand over correspondence of friends, but if they do, I am sure they do it up here, as we would do it, with the clear understanding that that is going to have an impact on your ability to have confidential dealings with the same person in the future. And that is something which is important to the larger handling of our diplomatic business, and that is the reason that we will not turn over the Secretary General's letter without his consent.

Senator BROWNBAC. Are you pressuring the U.N. Secretary General to release the letter?

Ambassador NEUMANN. We have raised the question with him, as did a Member of Congress, and he has declined to turn it over.

Senator BROWNBAC. I think there is a little difference, at least there is in my mind, whether I raise the issue with somebody or I really press them that this should be released. We have families that have lost loved ones that feel, rightly so, very strongly about this and want to get to the bottom of what is happening to their family members. Are you just raising it or are you actually pressing the U.N. to release this letter to the family members?

Ambassador NEUMANN. We have raised it with him, but we have not gone beyond that.

Senator BROWNBAC. Well, I would submit to you you should aggressively press this. I am sure you have met with a number of the families and I would hope you would feel the passion for some sort of clarity when others are dealing with their lives and the lives of their family members. I would hope you would press the U.N. very aggressively to release this to them where you have got their family members that were killed.

Ambassador NEUMANN. Mr. Chairman, we will re-raise the question. I think I have to say in all honesty that I doubt personally whether any single document is going to lay to rest the suspicion which is out there. But I can say with complete confidence that there is no deal. There is nothing which restricts the prosecutors. I find it a little odd that people actually think that one could manipulate a Scottish court in this way. I do not think one could personally, but maybe I live in a different world. But the fact is there is no deal. There is nothing which limits them. We have said that. We have said at the highest levels of this Government. The pre-

vious Lord Advocate of Scotland has said it, and I think you will see it in the conduct of the trial.

Senator BROWNBAC. Well, I would suggest to you that it does not seem odd at all that if you have got a primary piece of evidence about whether there is a deal or no deal and it is not released, that that creates its own suspicions and a great deal of them. This would be in the Government's best interest, in honesty and trying to allay these fears, to get that out to them because otherwise you just ask for that sort of suspicion.

Ambassador NEUMANN. I fully take your point, Mr. Chairman.

Senator BROWNBAC. I note that Colonel Qadhafi thinks this is not about Libya. Here is an interview that he did in Sky News on the eve of the Lockerbie trial. Here are some of his quotes. This is from Colonel Qadhafi in this interview he did. "By and large, the responsibility, as far as this matter is concerned, is an individual one," said Colonel Qadhafi. "The court is sitting to judge them, not whether they are Libyan agents. The court is sitting to decide if they are guilty or not." He sure does not think the trail is going to press toward him in this.

I would hope that our position will be we will follow this trail relentlessly wherever it goes.

Ambassador NEUMANN. Mr. Chairman, first of all, that is our position. We will follow the evidence wherever it goes.

Second, I noted that interview this morning myself, and I can simply say to you that I have not a clue what Colonel Qadhafi is talking about, but I attach no credibility whatsoever to that statement of views. On the other hand, if I were in Colonel Qadhafi's shoes, that is the position that I would, of course, be taking myself, as I think would any of the rest of us.

Senator BROWNBAC. I want to turn this over to Senator Torricelli.

But I guess what probably troubles me the most is it seems that the number of hearings that I have had here, that there seems to be a growing pattern of a willingness to try to engage nations that we have had very difficult relations or lack of relations with around the world here toward the end of this administration and a willingness to push aside the very sticking points as to why we have had these difficult relations or lack of relations. That is troubling to me because if you try to build the relationship without dealing with the fundamental problem between the two, that is not going to last. It is not going to be sustainable, and you are going to do it at a great price of harm to our standing and our standing for principles around the world and any sort of lasting relationship that you just say, well, we are going to avoid that nasty subject or we are going to try to kind of paper over it or shovel it aside while we try to go on.

That is not going to work. That is not going to be sustainable, and it does injustice to things that this country has stood for for a long time. I would hope the administration would not pursue that form of policy with Libya, with Iran, toward Iraq, toward Cuba, any nations around the world with which we have difficult problems.

Ambassador NEUMANN. May I respond to that, Mr. Chairman? Because I think you have touched on an element which is abso-

lutely central to the consideration that you have asked me to come here for today because I think were we to pursue the kind of policy that some have talked about, pushing aside, ignoring these interests, that would be quite wrong.

But what I am here to tell you today is not only are we not doing that, but I think in fact that we have had a considerable success, for which, despite ongoing doubts and questions, one might even give us some credit. Libya has moved out of active perpetration of terrorist actions. I do not know whether it will stay there. That is one of the questions that we are raising and looking at hard, but that is protecting American lives.

Libya has cut ties with, for sure, some terrorist organizations, possibly others. That is again something which needs investigation, but that is a success.

Libya has moved from active sponsorship of radical Palestinian groups which were dedicated to overthrowing the peace process to an active support of Chairman Arafat's Palestinians in the peace talks. That is a success.

The two bombing suspects are out and are under trial when for 10 years they were not. And that too is a success.

None of those steps that I have referred to as successes are the end of the process, nor are we arguing they are or asserting they are. All I am saying to you is that I believe we have had a substantial measure of progress to date, that we have been very realistic and very hard-headed in looking at what is going on, that we have given very little to Libya in return, and that we are continuing to be very methodical, very hard-headed, very clear-sighted in looking at what goes on. And the story is not over, and we do not have the assurances we want in a whole series of things, cooperation with the trial, payment of compensation. We are continuing to hold all those things up as essential steps that Libya has to perform. I think that is a correct policy and it has been the policy of three administrations going back quite a ways.

So, that is simply what I wanted to say, that I think it has been to date—and I emphasize the “to date”—a success and it is being handled very, very coldly. It is not a policy of warming up for the sake of warming up. There is not even that much warming up in it.

Thank you for letting me make those comments.

Senator BROWNBACK. And I appreciate your making those comments. I would also note that they remain a part of an exclusive club of seven state sponsors of terrorism.

Ambassador NEUMANN. Absolutely.

Senator BROWNBACK. I have been in southern Sudan with troops saying that there have been Libyan troops fighting on the other side. Now, I did not witness, nor can I verify that that is the case. And we have these trials that continue to take place where you have got 189 U.S. families. There may be some progress. There is a substantial distance yet to travel.

Senator TORRICELLI.

Senator TORRICELLI. Thank you, Mr. Chairman, and thank you very much for holding this hearing.

Mr. Chairman, there are few qualities I admire more about the American people than our eternal optimism, but the belief that the

United States is ever going to witness a reformation of the policies, the personalities of the Governments of North Korea or Cuba or Libya or Iraq is a triumph of hope over reality. The reality is that we are not going to witness changes. Month by month, we may witness different levels of activities, but Muammar Qadhafi is a defined individual with a set agenda that is never going to change. It is enormously damaging to the interests of this country that he ever received confusing signals that we are prepared to change our policies absent a fundamental change in his government. That is not only something true of Libya. It is true of North Korea and Iraq and Cuba and a variety of these other rogue nations.

But this is a consistent problem with American foreign policy. We go toe to toe with these outlaw regimes. They institute little or modest changes and we announce or initiate reviews of policy, providing no incentive whatsoever for changes in the regimes.

I want to make certain that the administration understands the bipartisan view of the Senate on the issue specifically of Libya. Are you familiar with Senate Resolution 287?

Ambassador NEUMANN. That was the one passed a week ago with—

Senator TORRICELLI. It was. Let us make clear that we understand where the institution resides on this.

One, Libya's refusal to accept responsibility for its role in terrorist attacks against United States citizens suggests an imminent danger to the physical safety of United States travelers. That appears to me to be clear. If Libya refuses to acknowledge that its agents killed American citizens through the destruction of an aircraft, does not change personnel, does not change a policy, does not hold its own people responsible, then that terrorist act is a continuing policy. Therefore, by definition, Americans would continue to be in danger. There being no intervening event, no one held accountable internally within Libya, I think that would be sound policy.

Is there something you can cite to show that the Senate is wrong in its conclusion that an imminent danger continues because of a refusal to accept responsibility? It seems to me the judgment of the Senate would be sound on this.

Ambassador NEUMANN. Since we have not made a judgment yet, I obviously cannot tell you what that judgment is. I do not think we are so asleep that we have missed that resolution or the sense of the Senate about it.

Senator TORRICELLI. What I am saying is that the entire U.S. Senate, having looked at the facts, concluded that there is no intervening event to suggest that Americans today would be safe to travel to Libya. I just want to go through a couple of points in the resolution because if you have facts that we are unaware of showing that we are wrong in our judgment, this is a good time to provide them.

Resolution 287 says that the administration should consult fully with Congress in considering a policy toward Libya, including disclosure of any assurances received by Qadhafi relative to judicial proceedings in The Hague. The chairman has already reviewed this with you, and you, recognizing the consequences, I take it, are making clear to us that these prosecutors are free, because in your

judgment it would be the normal course of business, to ask the suspects, the defendants in this case, about any instructions they received from other people in the Libyan Government, about knowledge of the Libyan Government, and that others who would be responsible in the normal course of judicial proceeding would be given consideration if they were to cooperate fully in determining those ultimately responsible. Indeed, there is no reason to believe that would not happen. Is that right?

Ambassador NEUMANN. There is no restriction whatsoever on what the prosecutors can do and how they can follow the evidence.

Senator TORRICELLI. No reason to believe that they would do the normal course of business in pursuing the case.

Ambassador NEUMANN. There is no reason they would not follow the normal course of business. I am neither a British Government official nor a Scottish prosecutor, so I cannot tell you what they will do.

Senator TORRICELLI. Based on all the knowledge that is available to you—

Ambassador NEUMANN. Based on knowledge available to me, there is no limitation.

Senator TORRICELLI. The Senate concluded the travel ban and all the United States restrictions on Libya should not be eased until all cases of American victims of Libyan terrorism are resolved and the Government of Libya has cooperated fully in bringing the perpetrators to justice.

That would mean at a minimum the travel ban, in the judgment of the Senate, should not be lifted until this trial has come to a conclusion. But even the conclusion of the trial would not necessarily mean the travel ban should be lifted because there is still an affirmative duty by the Government of Libya to cooperate beyond the end of this trial. At least that is my judgment as one who voted for this resolution.

So, the State Department may be conducting its own review, but let us be clear, in this institution of the Government, we have already reached a determination on these facts, that lifting this travel ban is not in the interest of this Government. There is no question in your mind then about where we all stand.

Ambassador NEUMANN. Oh, no, there is no question in my mind about where the Senate is in their resolution, Senator Torricelli.

I would like to make a couple of small observations, if I might.

Senator TORRICELLI. Please.

Ambassador NEUMANN. Obviously, I cannot debate a judgment that we have not—you have made a judgment. We have not made one. So, I am not in a position to quite go toe-to-toe with you on that.

There are a couple of points of fact I just want to note. First of all, the passport restriction is not a sanction. I think you have observed that—

Senator TORRICELLI. I am aware of that.

Ambassador NEUMANN [continuing]. In the structure of your comments which focused on the particular elements.

Second, our understanding is that it is to be applied only when there is an imminent danger to Americans, and that is a question which we are looking at. It is not structured as a sanction. There

are a great many countries in the world in which there is danger to Americans where we do not have a travel ban. There are obviously the facts that have to be reviewed and what you have pointed out. Yes, I certainly am aware of both the points you have raised and the issue of consultation with the Congress. I would hope that this hearing today is an aspect of consultation, but I do not take it to be the sum total of that.

Senator TORRICELLI. It is unambiguous in our view I assume.

Ambassador NEUMANN. I do not think I can mistake your view, sir.

Senator TORRICELLI. Let us approach this idea of imminency as a matter of law. In the years that have passed, in my judgment, given no evidence that Libyan Government policy has changed and the leadership of the government has not changed, there is no reason to believe that the thresholds of imminency cannot be reached. This would be like arguing that there is a statute of limitations on mass murder. The policy here is the same. The personnel are the same. The government is unchanged. And what reason would we believe that there has been some break suggesting the danger is not imminent? This would be like the Oklahoma City bombers, never having been apprehended, and 12 years later saying, well, we have not caught them, but there is no reason to believe they are still dangerous. Our government is not of such a forgiving nature with internal crime. I do not know why we would have such a fundamentally different view of the Libyan Government.

Ambassador NEUMANN. It is an interesting analogy. I am not sure I am in a very good position to argue it when we have not yet made a judgment because, if I argue with you on the question, I sound like we have made a judgment which I am defending. We have not yet made it.

Senator TORRICELLI. Let us approach the conversation with the mind that you have not reached a judgment. Therefore, you are arguing a hypothetical. But let us establish the point of law on what an imminent threat means.

Ambassador NEUMANN. You know diplomats hate to argue hypotheticals, Senator.

Senator TORRICELLI. Well, then let us argue law. What does imminent threat mean? I gave you the Oklahoma City example. In domestic law in this country, any prosecutor in America who abandoned the case or changed an investigation or declared that there was no threat to citizens from a mass murderer simply because they had been silent for 12 years we would impeach from office.

Now, the State Department is at least inviting that definition of law. So, clarify for me why my analogy is not sound.

Ambassador NEUMANN. I think the analogy is at least open to challenge, although I really think that to do that without having both my legal colleagues and the Secretary of State making a decision is to put me in the position of preempting a bit my boss, which I think you would understand I am a little reluctant to do.

The point of the trip was to look at a number of matters of fact in reaching a judgment of imminent threat, a judgment which still has to be made. Some of the things they did on that trip were to talk to—there are a number of Americans who are married to Libyans who have lived in Libya for years. They talked to them. There

are a considerable number of foreign embassies whose own nationals are traveling regularly in Libya. Remember that the terrorist issue was not one that only addressed Americans. We wanted to talk to them as well.

There is a question of where Libyan policy is and that is a question about which we still have some reservations, as I thought I indicated. So, I can say to you that we think there are a number of issues of fact that need looking at, but I do not think it is appropriate for me to get out in front of my boss and argue an analogy which, whatever I stipulate, appears to be stipulating to a decision which she has not made and I have to preserve her—

Senator TORRICELLI. That is fine, as long as the point remains that at least, speaking only for myself, the idea that the imminency of any threat has now lapsed is without merit and cannot be a foundation of any change of policy.

I also do not challenge that there is an ongoing review of American relations with any country. Our eyes and ears should be open at all times. I do, as the chairman suggested, question the sensitivity of having undertaken the trip and conducting this review at this moment. To have families that I represent in New Jersey packing to go to The Netherlands to seek justice for their loved ones who died by this terrorist act, while representatives of the United States are simultaneously packing to go to Libya, in the long history of American diplomacy could be a new height of insensitivity. And there has been a lot of competition for that honor, but this probably wins. It is an extraordinary act. Nevertheless, it has occurred.

Mr. Chairman, I have, I think, made clear how I feel both about the visit, but more than that any attempt to change the travel ban based on this belief that sufficient time has passed. Let me only suggest that if there is a message yet to be conveyed to the State Department for those who do believe there should be some, even limited rapprochement with Libya, if the administration were to exercise its authority to lift the travel ban, I believe the Congress would have no choice but to respond by a change of law instituting further sanctions against Libya. The administration has a right to lift the travel ban. It is in your judgment. It is in our judgment to replace it with a change of policy in law. I do not believe we would have any choice but to do so if this error of judgment were made.

Senator BROWNBACK. Thank you, Senator Torricelli.

Ambassador Neumann, I am sitting here and I am listening to a discussion. I think the aspect that is so troubling to me about it is the Congress does not have a question about this. I think the resolution that the Senator from New Jersey read passed unanimously in this body. So, there is not a muddled confusion here about this and it is not a partisan issue. This just seems pretty clear to people, that this relationship is not at a point, no matter what you may argue what Libya has done, that we would lift the travel ban or send any indicator that this thing is changing at all. And yet, the administration, as I listen to the dialog and I listen to your answers to me, it is like you are looking for that reason to do something here to send a different signal to Libya. And it seems to be a pattern of different countries around the world that this is

taking place here in the waning hours of this administration for whatever reason.

That is deeply troubling to this Member. I think it is troubling overall to this body. I know it is to Senator Torricelli from his comments and questions here, that those are the sort of foreign policy moves it sounds like or it seems like at least internally being discussed within the State Department and probes being put out in different ways.

Now, I know how the Libyans interpret your moves, and we roughly deem them about the same as the Libyans. I would hope you would stop sending those sorts of signals, and if you desire more clarity from the view of the legislative branch on this, I think we can provide that to you, but I do not know that we need to give you more clarity on any of these issues, whether it is on Libya or if it is on Cuba or Iraq. I think people are just pretty clear on this.

I want to ask you one final question. I have seen reports that in calculating what it deems to be appropriate compensation paid by the Libyan Government for the bombing of Pan Am 103, the State Department has employed formulas used in past cases of accidental killings of Americans abroad. Now, I would hope that that cannot be right and that you would clear that up for me. Is that report accurate?

Ambassador NEUMANN. No, I do not believe it is accurate. First of all, we have never taken a position on a compensation sum, a figure of any kind. There is a civil suit of the families that is also in progress. We have said compensation has to be paid. We have said to virtually every third party who has talked to us about this either on Libya's behalf radiating a message or who might carry a message back that the Libyans need to deal with this. They should deal with it sooner rather than later, and they need to look at settling the case and paying compensation.

We have not interjected ourselves with either a figure, and it has been our understanding that the attorneys for the families have not wanted the U.S. Government to be actively involved in this case. So, I do not quite know where the notion comes from that we have picked some kind of a figure.

Senator BROWNBACK. And there is not a figure that the State Department has been contemplating on appropriate compensation. Is that correct?

Ambassador NEUMANN. To the best of my knowledge, there is no figure that we have deemed to represent appropriate compensation.

Senator BROWNBACK. I would ask for you to inquire further and be certain of your answer. If you would supply that to me, I would appreciate that, if there is any figure that the State Department has been considering for appropriate compensation. If you would provide that to me.

[The following information was subsequently supplied:]

A thorough review of pertinent State Department records revealed that, during President Clinton's first term in office, members of the Administration, including former National Security Adviser Anthony Lake, publicly speculated about amounts that would constitute adequate compensation to the families of victims of the Pan Am 103 bombing. Such speculation ceased, however, when Pan Am 103 family members asked Administration officials to leave the calculation of adequate compensation to the courts. During President Clinton's second term, members of the Adminis-

tration, both at the State Department and at the NSC, have avoided any speculation concerning a figure that would represent appropriate compensation.

Senator BROWNBACK. Thank you, Ambassador, for appearing in front of the committee. I appreciate your willingness to take our questions on the difficult issues in front of us.

Ambassador NEUMANN. Well, thank you for letting me come forth and thank you for giving me a little bit of time to talk about our side.

I hope you will at least continue to consider the fact that it is not a broad policy of rapprochement, that it has been a policy of trying to achieve the goals that we have set out and the previous administrations of both parties have set out. To date there is a limited amount of progress, which is real and which does serve American interests, and we have not given anything away in that process. But I would have to say in certain clarity that, yes, I do agree with you. Your views are clear and they certainly have been communicated. We look forward to continuing to talk.

Senator BROWNBACK. And they are not just my views.

Ambassador NEUMANN. No.

Senator BROWNBACK. This is a unanimous vote of the U.S. Senate that I would hope would carry at least some weight with the administration on this view.

Ambassador NEUMANN. Thank you, sir.

Senator BROWNBACK. Thank you.

The second panel will be the Honorable John Bolton, former Assistant Secretary of State for International Organizations Affairs and now senior vice president of the American Enterprise Institute, and Ms. Stephanie Bernstein with the group, Justice of Pan Am 103.

Ms. Bernstein, I believe we will go first with you, if you would not mind going first.

Ms. BERNSTEIN. OK, that is fine.

Senator BROWNBACK. I deeply appreciate your willingness to go through this and be here with us today to talk about the issue in front of us on the relationship with Libya and justice of Pan Am 103 victims. Thank you for being here.

**STATEMENT OF STEPHANIE BERNSTEIN, JUSTICE OF PAN AM
103, BETHESDA, MD**

Ms. BERNSTEIN. Thank you for holding the hearing, Senator Brownback, and I want to also thank Senator Torricelli, who has been a longtime supporter of the family members. I know of all that you have done through Dan and Susan Cohen and others.

My husband, Mike Bernstein, was an ordinary person and he died an extraordinary death. He was 1 of 270 people murdered in the terrorist bombing of Pan Am flight 103. Mike's dreams were simple. He wanted to guide his children into adulthood. He wanted to grow old with his wife. He wanted to do work which brought him satisfaction and which contributed to making the world a better place than he found it.

Mike was a Federal employee. He was the Assistant Deputy Director of the Office of Special Investigations at the Department of Justice. This is the office which locates, denaturalizes, and deports people who entered the United States illegally after the Second

World War. They had participated in Nazi atrocities and lied about it during their immigration interviews.

In fact and ironically, my last face-to-face conversation with Mike was when I drove him to Dulles Airport. He was on official U.S. Government business at the time that he was murdered. He was a delegation of attorneys from the Department of State trying to convince the Government of Austria to take back an Austrian citizen the Austrians would rather not have taken back. He discussed his strategy with me in the car on the way to Dulles. His concern was not how he would handle the Austrians; his concern was how he would handle the State Department. Unfortunately, he was not right in terms of the negotiations. They were successful. The Austrians took this man back, but he was absolutely right. And I will talk a little bit about the attitude that we have heard expressed this morning.

In addition to me, Mike left two children. My daughter was 7½ and my son was 4. He left a wife, a mother, and countless friends. He was 36 years old.

The President's Commission on Aviation Security and Terrorism, which was appointed by President Bush in the aftermath of the Lockerbie bombing, advocated a very strenuous response to terrorism. Among other things it recommended, that we do not treat international terrorism solely as a law enforcement problem just because a law enforcement approach usually does not target more than a few members of the group which actually carried out the terrorist attack. Such an approach is not effective against those who sponsor those kinds of attacks.

The commission further recommended that while multinational responses to terrorist acts are the ideal, nations must reserve the right to respond unilaterally because terrorist acts are often acts of aggression against a country.

Absolutely none of these recommendations have been followed in the Lockerbie bombing. Both the Bush and Clinton administrations have promised the families of those murdered over Lockerbie that the U.S. Government was committed to discovering who ordered, paid for, and executed this terrible crime. These promises have been hollow.

The families have been told repeatedly that intelligence data exist which answer these questions. Instead of acting on this information, both the Bush and Clinton administrations have done what was expedient, not what was right. In moving the Lockerbie bombing to the venue of the United Nations, the Bush administration avoided taking responsibility for what was an attack on American citizens and, therefore, an attack on this country. Pan Am 103 was targeted because it had an American flag on its tail. The Bush administration had no problem defending U.S. interests during the Gulf war when it perceived that oil was at stake. It did not have the courage, however, to stand up for American citizens who lost their lives precisely because they were Americans.

The Clinton administration has placated the Lockerbie families with the right language, but its record has been just as poor. While assuring the families that no deals would be made with Libya and promising us that the United States would hold firm on the Libyan sanctions in the United Nations, the Clinton administration was

secretly pursuing the deal which resulted in the trial which began yesterday in The Netherlands and which I and other family members are able to view here in Washington.

I was fascinated to hear in Ambassador Neumann's testimony that these secret talks began in the fall of 1997, at the same time that the State Department and the administration were assuring the families up and down that there were no such talks under way. There was no such deal in the offing.

Although this trial has been dressed up by the administration and the State Department, it is unlikely to produce justice, and furthermore, will result in the end of any meaningful effort to discover the truth about what happened and to hold those responsible accountable.

Sections of the letter which gave the Libyans the assurances necessary to turn the suspects over were read to me and other family members. And in the Post today, Qadhafi is quoted in an interview with Sky TV referring to the agreement with the United States and Britain. In return for his turning the suspects over for trial, he said, "the court will not raise questions about Libyan Government involvement in the bombing. The agreement is to try these two suspects, these two suspects only," he said.

The letter and its accompanying annex, as we have talked about already today, have not been made public. First, family members were told that these documents did not exist. This was after portions had been read to us. Next, we were told that they could not be found. Finally, in response to two Freedom of Information Act requests, we were told that the documents had been classified. Just 3 weeks ago, Sandy Berger in a letter to a Pan Am family member changed direction yet again, writing that it is the U.N.'s decision whether to make these documents public. He stated that our Government "disagrees" with Kofi Annan's decision not to make the documents public, and that "we will continue to urge disclosure of this correspondence."

I maintain regardless of what is in that letter, there is no way that Qadhafi would have turned the suspects over without some type of guarantee. Prince Bandhar, Nelson Mandela were very involved in these negotiations, and we have no idea what was said to Qadhafi.

The trial itself was designed with Qadhafi's concerns in mind. And I was further interested to hear that the Scottish court has not been manipulated. The Scottish court is sitting outside Scotland. There is no jury because Colonel Qadhafi did not want a jury. This has never, ever happened in a murder trial in Scotland.

Qadhafi was concerned that there would not be a fair trial, and as we know, the suspects are being tried at a former U.S. military base in The Netherlands. Because Qadhafi was fearful that a jury would be more likely to return a guilty verdict, he specified that the trial be held before three judges.

In addition, Qadhafi pressed for the trial to be held under Scottish law because of its strict standards for admissible evidence, and this is a tremendous disadvantage in a case which is largely circumstantial. I believe it is very possible that the defendants will go free at the conclusion of the trial. In addition to verdicts of guilty and not guilty, Scottish law provides for a verdict of not

proven. The result of this verdict is the same as a verdict of not guilty: the accused would go free.

Although the Clinton administration has made promises to the Pan Am families that the conduct of the trial will not be hampered by the contents of the letter and annex sent to Qadhafi, this is an empty promise. And I think this is a very important point. Mrs. Albright and others have promised that the prosecutors will take the evidence wherever it goes. This is either cynical manipulation or naivete. I do not know which is worse. In fact, the criminal case against the two Libyans, as I understand it, is very narrowly focused. U.S. prosecutors have told family members that it is highly unlikely that any evidence which could be used to pursue those higher up the chain of command will come out at the trial.

Even without the assurances given to Qadhafi to get him to turn the suspects over for trial, it is unlikely that others will ever be held accountable. I believe that the United States is well on its way to resuming normal relations with Libya. We talked about the visit by the State Department group a month and a half ago, and I just want to add they were there for a grand total of 26 hours.

Once normal relations are resumed with Libya, no further investigation will occur. U.S. oil companies are anxious to do business again with Libya. There is a lot of money to be made. Those countries, such as Great Britain, which have already resumed diplomatic relations with Libya are reaping enormous economic benefits.

Former U.S. public officials and some current ones are getting into the act as well. Former D.C. Delegate Walter Faunteroy has been trying to put together a delegation to travel to Libya. This group includes several current Congressmen, and met with officials at the State Department in February to discuss such a trip. At this meeting, representatives from the group were told by the State Department that if they do travel to Libya, the subject of compensation for the Lockerbie families will be discussed. This is an attempt by the Libyans and others to buy the families' silence.

Herman Cohen, a former State Department official during the Bush administration, recently traveled to Libya to discuss relations between the two countries with an eye toward improving the climate so that business can resume. During his trip, he met with Qadhafi, as well as Abdullah Senussi. Senussi is Qadhafi's brother-in-law. He was convicted last year in absentia by a French court in the UTA bombing. This was a mid-air bombing similar to Lockerbie in which 171 people, including the wife of an American diplomat, were murdered. These and other business contacts by U.S. citizens are detailed in a recent Time magazine article.

As a family member whose husband was murdered in a terrorist attack, these efforts to promote business at the expense of justice are deeply disturbing. I am afraid that we are sending a message that terrorists and the countries which sponsor or harbor them will not have to pay a price for their actions. When we allow ourselves to believe that encouraging business relationships with these countries will somehow inoculate us against further terrorist attacks, I believe that we are dangerously naive. Is it really good business to do business with terrorists? Should the murder of innocent human beings ever be a prelude to business as usual?

I wish that I could be more optimistic that there will ever be justice for my husband and the others who were so brutally murdered with him. Despite years of effort by family members whose loved ones fell from the sky that December night in Scotland, we have only what I fear will be a show trial and the rehabilitation of the regime which ordered the attack. If we have learned anything from Lockerbie I hope it is that sweeping murder under the rug by convincing ourselves that we are pursuing justice will only undermine global stability and compromise the principles on which this country was founded.

Thank you.

[The prepared statement of Ms. Bernstein follows:]

PREPARED STATEMENT OF STEPHANIE BERNSTEIN

My husband, Mike Bernstein, was an ordinary person who died an extraordinary death. He was one of 270 people murdered in the terrorist bombing of Pan Am flight 103. His dreams were simple: he wanted to guide his children into adulthood. He wanted to grow old with his wife. He wanted to do work which brought him satisfaction and which contributed to making the world a better place than he found it.

Mike was a federal employee. He was the Assistant Deputy Director of the Office of Special Investigations at the Department of Justice. This is the office which finds, denaturalizes, and deports persons who entered the United States illegally after World War II because they had participated in Nazi atrocities during the Holocaust. Mike left two children, ages 4 and 7, a wife, a mother, and countless friends. He was 36 years old.

Prior to Mike's murder, I was able to hold at arm's length the evil which drives people, in the name of a cause or revenge to take the lives of innocent men, women, and children. After Lockerbie, many of us became fearful that ordinary activities, like putting a loved one on an airplane, could have devastating consequences. During a train ride to New York, shortly after his Dad's murder, my then four year old asked me if people ever put bombs on trains.

In the years since my husband's murder, I have thought a great deal about terrorism, and about how peace loving nations can deter it. I believe that the only way to deter terrorism is to pursue justice against its perpetrators, and to make clear that sponsoring terrorism, or harboring those who carry it out will not be tolerated by the civilized world.

The President's Commission on Aviation Security and Terrorism, appointed by President Bush after the Lockerbie bombing, advocated such a strenuous response to terrorism. In its report to the President, the Commission recommended that international terrorism not be treated solely as a law enforcement problem, because a law enforcement approach usually does not target more than a few members of the group which actually carried out the terrorist attack. Such an approach is not effective against those who sponsor terrorist attacks. The Commission further stated that while multinational responses to terrorist acts are the ideal, nations must reserve the right to respond unilaterally. Terrorist acts are often acts of aggression against a country.

None of these recommendations have been followed in the case of the Lockerbie bombing. Both the Bush and Clinton administrations have promised the families of those murdered over Lockerbie that the United States government was committed to discovering who ordered, paid for, and executed this terrible crime. These promises have been hollow.

The families have been told repeatedly that intelligence data exist which answer these questions. Instead of acting on this information, both the Bush and Clinton administrations have done what was expedient, not what was right. In moving the Lockerbie bombing to the United Nations, the Bush administration avoided taking responsibility for what was an attack on American citizens, and therefore, an attack on America. Pan Am 103 was targeted because it had an American flag on its tail; of the 270 killed in this murderous attack, 189 were U.S. citizens. The Bush administration had no problem defending U.S. interests during the Gulf War when it perceived oil was at stake. It did not have the courage, however, to stand up for American citizens who lost their lives precisely because they were Americans.

The Clinton administration has placated the Lockerbie families with the right language, but its record has been just as poor. While assuring the families that no deals would be made with Libya, and promising us that the United States would

hold firm on the Libyan sanctions in the U.N., the Clinton administration was secretly pursuing the deal which has resulted in the trial which began yesterday in the Netherlands. Although the trial has been dressed up by the administration and the State Department, it is unlikely to produce justice, and, furthermore, will result in the end of any meaningful effort to discover the truth about what happened and to hold those responsible accountable.

Sections of the letter which provided the Libyans the assurances necessary to turn the suspects over were read to me and other family members. Promises were made that the Libyan regime would not be undermined or embarrassed during the trial. This letter and its accompanying annex have not been made public. First, we were told that the documents did not exist. Next, we were told the documents could not be found. Finally, in response to two Freedom of Information Act requests, we were told the documents have been classified. Just three weeks ago, Sandy Berger, in a letter to a Pan Am family member, changed direction again, writing that it is the U.N.'s decision whether to make these documents public. He stated that our government "disagrees" with the Secretary General's decision not to make the documents public, and that "we will continue to urge disclosure of this correspondence."

The trial itself was designed with Gadhafi's concerns in mind. He did not want the trial to be held in Scotland or the United States, as specified in the indictments of the two suspects. He was concerned that they would not receive a fair trial, so the suspects are being tried at a former U.S. military base now owned by the Dutch, who, for the purposes of the trial, have ceded the land to the Scots. Because Gadhafi was fearful that a jury would be more likely to return a guilty verdict, he specified that the trial be held before three judges. This has never been done before in the history of the Scottish legal system. Gadhafi pressed for the trial to be under Scottish law because of its strict standards for admissible evidence, a tremendous disadvantage in a case which is largely circumstantial.

It is very possible that the accused will go free at the conclusion of the trial. In addition to verdicts of guilty and not guilty, Scottish law provides for a verdict of "not proven." The result of this verdict is the same as a verdict of not guilty—the accused would go free.

Although the Clinton administration has made promises to the Pan Am families that the conduct of the trial will not be hampered by the contents of the letter and annex sent to Gadhafi, this is an empty promise. Mrs. Albright and others have promised that the prosecutors will "take the evidence wherever it goes." This is either cynical manipulation or naivete—I don't know which is worse. In fact, the criminal case against the two Libyans is very narrowly focused. Prosecutors have told family members that it is highly unlikely that any evidence which could be used to pursue those higher up the chain of command will come out at the trial.

Even without the assurances given to Gadhafi to get him to turn the suspects over for trial, it is unlikely that others will ever be held accountable. The United States is well on the way to resuming normal relations with Libya. Once that occurs, no further investigation will occur. U.S. oil companies are anxious to do business again in Libya; there is much money to be made. Those countries, such as Great Britain, which have already resumed diplomatic relations with Libya are reaping huge economic benefits. The visit to Libya this spring by a delegation from the State Department to evaluate whether the passport ban should be lifted sent yet another signal that normal relations are just a matter of time.

Former U.S. public officials are getting into the act as well. Former Delegate Walter Faunteroy has been trying to put together a delegation to travel to Libya. This group includes several current Congressmen, and met with officials at the State Department in February to discuss such a trip. At this meeting, representatives from the group were told by the State Department that if they do travel to Libya, the subject of compensation for the Lockerbie families will be discussed. This is an attempt by the Libyans and others to buy the families' silence.

Herman Cohen, a former State Department official during the Bush administration, recently traveled to Libya to discuss relations between the two countries, with an eye toward improving the climate so that business can resume. During his trip, he met with Gadhafi, as well as with Abdullah Senussi. Senussi is Gadhafi's brother-in-law, and was convicted last year in absentia by a French court in the UTA bombing. This was a mid-air bombing, similar to Lockerbie, in which 171 people, including the wife of an American diplomat, were murdered. These and other business contacts with Libya by U.S. citizens are detailed in a recent Time Magazine article ("Why Libya Wants In," March 27, 2000).

As a family member whose husband was murdered in a terrorist attack, these efforts to promote business at the expense of justice are deeply disturbing. I am afraid that we are sending a message that terrorists and the countries which sponsor or harbor them will not have to pay a price for their actions. When we allow ourselves

to believe that encouraging business relationships with these countries will somehow inoculate us against further terrorist attacks, I believe that we are dangerously naive. Is it really good business to do business with terrorists? Should the murder of innocent human beings ever be a prelude to business as usual?

I wish that I could be more optimistic that there will ever be justice for my husband and the others so brutally murdered with him. Despite years of effort by family members whose loved ones fell from the sky that December night in Scotland, we have only what I fear will be a show trial and the rehabilitation of the regime which ordered the attack. If we have learned anything from Lockerbie, I hope it is that sweeping murder under the rug by convincing ourselves that we are pursuing justice will only undermine global stability and compromise the principles on which this country was founded.

The cases in which my husband sought justice were many decades old. He believed strongly that justice was worth pursuing. He felt that there should be no time limit on justice when atrocities are committed. After Mike's murder, I received a letter from Yvan Roy, the Director of the Crimes Against Humanity and War Crimes Section of the Department of Justice of Canada. He wrote:

The dedication of people such as Michael is that which combats the senseless cycle of hatred and devastation. All for which we can work and pray is that through the commitment of people like Michael, we continually proceed further towards the goals which will hopefully diminish and eventually one day eliminate the havoc that is wrought on innocent individuals.

Senator BROWNBACK. Thank you. Thank you for your powerful testimony and your thoughtfulness and your willingness to come here to testify today.

Mr. Bolton, thank you for joining us. The floor is yours.

STATEMENT OF HON. JOHN R. BOLTON, FORMER ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL ORGANIZATION AFFAIRS; SENIOR VICE PRESIDENT, AMERICAN ENTERPRISE INSTITUTE, WASHINGTON, DC

Mr. BOLTON. Thank you very much, Mr. Chairman. Let me come right to the point.

Our national policy toward Libya today is a policy of appeasement. There just simply is no other way to describe it, and I think you can understand it best by looking at the evolution of the handling of the Pan Am 103 matter.

First, it seems to me, if we have learned anything in hindsight, is that, beginning with the Bush administration, in which I served, we should have treated Pan Am 103 as an attack on the United States and responded accordingly. We made a mistake by treating it as a diplomatic or judicial matter. We should have followed President Reagan's example in the wake of the La Belle Disco bombing. We should have attacked Libya militarily and hopefully gotten a little bit luckier than the Reagan administration bombing.

We should treat the war on terrorism seriously. It may be too late now to do anything militarily with respect to the perpetrators of Pan Am 103, but we should have no illusions in the future that every other terrorist and potential terrorist in the world has marked our policy over the past 11 years carefully and has drawn, sad to say, the appropriate conclusions.

Second, Mr. Chairman, we were wrong from the outset to take the Pan Am 103 attack to the Security Council and to restrict ourselves to U.N. processes. I can say here, just as a personal matter, I am the only person I know—I may be the only person ever—who has been both an Assistant Secretary of State and an Assistant Attorney General. I know both of these Departments inside and out.

And I know what happened in 1991 and 1992 when the Bush administration made a decision to seek Security Council condemnation of Libya, followed by a very limited regime of sanctions, Mr. Chairman, in Security Council Resolution 748.

At the time I opposed the notion that we should take Pan Am 103 into the Security Council. And I do not want to overstate this. I did not, at the time, appreciate much of what I have come to see since then. My argument at the time, which was overruled, was that we would expend an enormous amount of political and diplomatic effort and not achieve very much concretely. I would say, unfortunately, I think that prediction was true. We did expend an awful lot of diplomatic effort, and we achieved by a vote of 10 to 0 with 5 abstentions in Resolution 748 a very minimal set of sanctions that was only modified to a very insubstantial degree in 1993.

The result, however, was that once we had wrapped ourselves around the U.N. axle, the unilateral resort to military force became, as a practical matter, more and more difficult, indeed impossible.

Now what we see, as you and Senator Torricelli and other witnesses have commented on, is an apparent rush toward full normalization of diplomatic relations with Libya. This is a scene in a whole series of steps that you previously discussed, and it is also underlined in the pattern that you have mentioned of a similar rush toward normalization with countries like Cuba, the Sudan, Syria, Iran, and North Korea. I think this pattern clearly is not a series of discrete decisions. The sixth floor of the State Department is not capable of coming up with so coherent a policy. It must be a policy at the top level, which I would urge this committee to look into.

We have heard a lot today from the administration about statements about this and statements about that and some steps here and things we are not quite sure about. Let us look at the real record.

The seizure by British customs authorities, only a few months ago, of shipments of so-called auto parts on their way from China to Libya, were crates containing Scud missiles. Now, this is in flat violation of the weapons embargo contained in Resolution 748. It was seized by British authorities under authority of European Union sanctions against Libya which were imposed after 748. You are not working on Scud missiles like that just waking up one morning and saying, well, I think I will order. This is obviously part of a pattern that the Libyans have been engaged in, and the notion that Scud missiles and the threat that they posed to the southern countries of Europe is something that we should ignore I just find inexplicable. This is not talk. This is not assertion. This is not abstract theory. This is real Libyan conduct, just a few months ago, that tells us what they are really up to.

Third, Mr. Chairman, the United States, particularly in the past 2 years, has made repeated, unilateral, unreciprocated concessions to Libya that I think gravely threaten the prosecution's case at Camp Zeist and undermine our own legal system at the same time.

Let me turn immediately to this question of whether there are assurances or a deal between Libya on the one hand and the United States and the United Kingdom on the other. We know

from what members of the families have told us that before the magical classification of the Secretary General's letter, they were read portions of it. And a number of things stick in their minds, but one phrase that comes up over and over again is a commitment not to "undermine" the Government of Libya, that the prosecution of the case will not "undermine" the Government of Libya.

Now, I think Deputy Assistant Secretary Neumann has explained to us today exactly how that phrase got in there and why Muammar Qadhafi, as recently as yesterday, is proud to say publicly he thinks he has a deal. This idea that we would say, we have no interest in doing a Stalinist show trial—I do not know where that idea came from. I do not think anybody on our side of the table has ever thought of that. If that is Qadhafi's concern, that is really his problem. But in an effort to satisfy Qadhafi that we are not going to conduct a Stalinist show trial, it seems to me entirely possible that the Secretary General and the international diplomats and international leaders aiding him could have given assurances—whether they are embodied in this letter or not, obviously we do not know—that there was not a political aim, that there was not a desire to undermine the Libyan regime, thus giving Qadhafi sufficient assurances that his position would not be threatened, that he would willingly sacrifice these two individuals, over whom, bear in mind, he retains considerable authority. He has their families back in Libya. I do not think these people are going to do anything other than play the script out for them that Qadhafi has written. But the point is that Qadhafi holds the card to make sure that, in fact, his regime is not threatened.

Now, you can say at the same time, well, the prosecutors can pursue the evidence wherever it leads. Pursue what evidence, Mr. Chairman? It is unquestioned—top FBI officials have said this—that the Government of Libya has been for the past 10 years seriously about the business of destroying evidence, tampering with evidence, fabricating evidence, destroying witnesses, tampering with witnesses, coming up with new witnesses. This is not a trial in the United States for murder. This is a trial being conducted against a rogue regime that has no concept whatever of due process, as it has demonstrated repeatedly.

The really interesting question here, as we watch the trial unfold, is what Scottish judges are going to do if confronted with objections from the defense that the prosecutors have begun to engage in a political trial of the Libyan regime. How is a Scottish judge supposed to rule on an objection like that? And if the objections go the wrong way from Libya's point of view, what happens to the trial? Worse yet, if the objections are sustained—that is to say, go the right way from the Libya point of view—what is going to happen to the defendants? I think it is clear they are going to walk.

This element of concession and these repeated concessions to the Libyans has colored American policy throughout the past 2 years. A number of things have been mentioned.

We have given up the argument that these defendants should have been tried under American law. Is that significant? Absolutely, Mr. Chairman. Scottish law does not provide for the death penalty. And I cannot think of a more appropriate case for the im-

position of the death penalty than for the people who are found guilty of the murder of 270 innocent civilians in a terrorist bombing.

In addition, Resolution 1248 provided that the Secretary General will name U.N. observers to watch the trial. Indeed, he has recently done so. U.N. observers, Mr. Chairman? Is Scottish justice not quite up to Libya's high standards of due process? We have a problem with Scottish justice that we need five U.N. observers? And what is their role going to be if they see the trial drifting in a political direction? At least I know one of the observers, a former Egyptian Permanent Representative to the United Nations in New York. The press has reported that one other of them has represented the Libyan mission to New York in his capacity as a lawyer. I am really not looking forward to the conduct of these five U.N. observers.

And then, just as icing on the cake, if these defendants are convicted, there will be U.N. observers monitoring their incarceration in Scotland, as if Scottish jails also do not measure up to those high Libyan standards.

Mr. Chairman, these are very serious negative precedents for other cases of international terrorism that may arise. I think given that this is sort of the threshold for what we are going to see in the future, I can see this trend only being downhill.

Let me just address very quickly one other aspect here that goes to this question of the visas that Senator Torricelli raised. There is, it seems to me, not very much question that there is a continuing and ongoing obstruction of justice here. If, as well, the investigators at our Department of Justice, who by the way have been systematically excluded from most negotiations, most decisionmaking over the Pan Am 103 matter by the State Department—but if they are accurate that not a sparrow falls in Libyan intelligence services without Qadhafi's approval, then there is also no question that Qadhafi himself is a co-conspirator, indeed, the lead co-conspirator in the murder itself, as well as in the ongoing obstruction of justice. If that is the case, Senator Torricelli, it is not even a matter of a transgression being committed 11 years ago, it is a continuing transgression. There is still illegality under terms of American law and, therefore, still full and complete legal warrant under the terms of the statute to worry about the safety of Americans. The terrorist, in fact, is still loose.

Mr. Chairman, let me just conclude by saying that what this weak and craven policy has done is to leave us with effectively no Libyan policy, especially if the trial goes badly and the high standard of proof, guilt beyond a reasonable doubt, is not met. I have been very encouraged in the past couple of months by the increased attention that Members of Congress have given to this matter and by the efforts that have been made to obtain Kofi Annan's letter and other things. I think your decision to hold this hearing this morning is extremely important not only for the Pan Am 103 families who have been so abused in the 11 years since the tragedy, but for the larger issue of how America deals with terrorist attacks like this. It is unquestioned, it seems to me—and the Senate has reflected this—that an attack on one American is an attack on all. And I hope congressional interest in this matter will increase. I

hope it becomes the subject of discussion in our Presidential campaign. I think it is something that all Americans should take a lot more seriously than we have the past several years.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Bolton follows:]

PREPARED STATEMENT OF HON. JOHN R. BOLTON

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you this morning to testify on American policy toward Libya. I have a prepared statement I would like to submit for the record, which I will summarize, and then I would be happy to answer any questions Members the Subcommittee may have.

Yesterday, trial began for two Libyan intelligence agents, accused of the heinous murder of 270 innocent civilians in the terrorist bombing of Pan Am 103 on December 21, 1988. At first glance, the prosecution's formal opening in a Scottish court sitting in the Netherlands may seem like something to celebrate, a time for rhetoric about "the rule of law" in international affairs. We will certainly hear a good deal of that from the Clinton Administration.

Unfortunately, however, the trial may actually mark the final collapse of U.S. policy toward Libya, and the end of our efforts for a real vindication of Pan Am 103's victims. This collapse embodies both a failure of will to use military force to respond to a brutal attack on our citizens, and self-imposed, potentially crippling limitations on even the narrow avenue of prosecution. While this erroneous approach started during the Bush Administration, it has been refined and perfected in the Clinton State Department. Equally repellent, we must simultaneously watch the spectacle of the Administration's pell-mell rush to resume full diplomatic relations with Libya, as soon as it can elide the inconvenient indignation of the Pan Am 103 families and their Congressional supporters.

How have we allowed such a policy to develop to full maturity? What should we have done over the past eleven years, and what should we do now to meet our obligations not only to the immediate victims of the Pan Am 103 bombing and their families, but to redeem our larger national interests, not least of which is to rescue whatever may be left of our credibility in the struggle against international terrorism?

1. We should have treated the Pan Am 103 bombing as an attack on the United States, and responded accordingly

Eleven-plus years after Pan Am 103's destruction and nine years since American and Scottish prosecutors indicted these two defendants, we are long past any realistic prospect of a proper military response. All we can do now is note our basic mistake in 1991-92 to judicialize this issue rather than to use force, in contrast with President Reagan's decision to launch air strikes against Libya for the 1986 "disco bombing" of U.S. servicemen in Germany.

Although it sounds better to unleash hard-headed prosecutors rather than weakkneed diplomats against terrorists, there is a better option still: cold steel. Instead of responding to the bombing as if it were a domestic murder case, we should have seen this Libyan act of terror as the political-military attack that it was, and responded accordingly. The American response—either unilaterally or with whichever allies would join us—should have been to declare war on the terrorists, just as President Clinton purports to have done against Osama bin Laden. Then, unlike President Clinton, we should have gotten serious about it. Using military force against terrorists does not violate our legal or moral obligations. It does prevent the law from being perverted by its sworn enemies. That is the real lesson we should have taught Gadhafi—and all the others who are watching—about Pan Am 103.

Instead, we have followed a debilitating diplomatic course of concessions and further restrictions on our legal system's integrity and autonomy. Every sign now points toward an imperfect trial, tilted toward acquittal. This is simply no way to deal with terrorism. Prosecutors in the Anglo-American system must prove guilt beyond a reasonable doubt, an extremely high burden of proof in any criminal trial, and even more difficult when the defendants' government has almost certainly destroyed or tampered with the evidence and witnesses.

2. The United States was wrong from the outset to take the Pan Am 103 attack to the Security Council, and to restrict ourselves to United Nations processes

In January, 1992, in Resolution 731, the Security Council took the unprecedented step of deploring Libya's failure to cooperate with international law-enforcement ef-

forts. Two months later, in another unprecedented step, the Council's Resolution 748 imposed economic sanctions against Libya. Although hailed at the time as great victories, in fact, there was little enthusiasm for the initial condemnation of Libya, and we were barely able to gain support for the imposition of sanctions. We have been under continuous pressure since 1992 to scale back or eliminate the sanctions on any pretext, largely from Europeans who would rather trade with Moammar Gadhafi than punish him for murder. Ironically, not even Gadhafi is playing along with this charade. In an April 3 speech to the African-European summit in Cairo, he declared that "Africa is not a ping-pong ball to be hit once by Europe, once by the U.S.," and "we do not need democracy; we need water pumps."

Unfortunately, Secretary of State Madeleine Albright's unseemly haste to achieve the normalization of relations with Libya embodies the State Department's typical deference to the European Union, combined with the Near East bureau's inevitable "clientitis" toward authoritarian regimes. Only the unlikely but powerful combination of Senators Jesse Helms and Edward Kennedy has slowed down the Department's efforts, through their resolution, recently adopted by the full Senate, cautioning against the rush toward normalization.

Libya's own actions in the months preceding the opening of trial have been openly contemptuous toward the United States and the United Kingdom. In November, 1999, for example, British authorities at London's Gatwick Airport seized a shipment of "auto parts" bound indirectly from China to Libya. Based on tips received as early as April, 1999, the British believed, correctly, that the "auto parts" were in fact Scud missile components, violating a European Union arms embargo against Libya. Nonetheless, undeterred by Libya's blatant disregard for international sanctions, the United Kingdom did normalize relations with Gadhafi, and the Clinton Administration seems intent on doing so as well. What does it take for our Administration to realize the error of policies of reconciliation with Gadhafi? In addition to Scud missile components, does it need hard evidence of nuclear, biological or chemical weapons to become concerned?

There is absolutely no warrant to move toward the normalization of American diplomatic relations with Libya, whatever the verdict of the Scottish court. How anyone could interpret Gadhafi's actions over the past several years as meriting the return of "business as usual" with his dictatorship is a mystery, except in the context of the larger drift of American policy toward fanatically anti-American governments.

From Libya, to the Sudan, to Cuba, to Iran, to North Korea, and perhaps elsewhere, Secretary Albright seems determined to restore relations with rogue regimes whose only common thread is their hatred of the United States and blatantly criminal behavior toward our citizens and our interests. Any one of these rapprochements could be seen in isolation as a simple mistake in judgment—a failure by a State Department regional bureau—but it is only when all of these mistakes are taken together do we see that they must be part of a deliberate Administration policy. Such a sweeping, comprehensive reversal of previous U.S. policy could only come from the Secretary's Seventh Floor suite, and that is why the Senate's recent rejection of normalization with Libya, led by this Committee, is so important.

3. The United States has made repeated, unilateral concessions to Libya that threaten the prosecution's case, and undermine our own legal system

Secretary Albright, demonstrating she is no prosecutor, has made several critical mistakes in the preparation and handling of the trial itself. These mistakes have made it unfortunately likely that the trial will simply be a piece of political theater, far removed from the original law-enforcement scenario that its proponents envisaged a decade ago.

Initially, Secretary Albright conceded, without gaining anything in return, that the case would be tried under Scottish law, which does not provide for the death penalty for convicted murderers. While Scotland undeniably has a jurisdictional claim in the case, because eleven of its citizens died on the ground near Lockerbie, the American claim was far stronger, given that 189 of our citizens were among the 270 total fatalities. One can imagine valid reasons for deferring to the Scots, but to lose even the possibility of the death penalty without obtaining a single American objective in exchange is a stunning failure of the Secretary's diplomacy.

We can also see now that the next concession—to hold the trial in the Netherlands, rather than in Scotland itself—while seemingly unimportant initially, is also having adverse consequences. Leaks that the Administration would accept the Pan Am 103 trial in a third country originally appeared in July, 1998, before the terrorist bombing of our embassies in Kenya and Tanzania. Yet even after those bombings, and the subsequent American military retaliation, the Administration proceeded to give way on the Pan Am 103 trial location, which had, in the Bush Administration, been part of a "take it or leave it" proposition to Libya that the trial be

held in the United States or Scotland. Secretary Albright's concession that the trial could be held in the Netherlands (symbolically, site of the International Court of Justice at The Hague) was also billed as "take it or leave it," which could only further undermine our credibility with Gadhafi and the other closely-watching outlaw regimes. Indeed, after only a momentary hesitation, the Libyans began demanding further negotiations and concessions, just as they have done, ceaselessly, since they first faced the prospect of economic sanctions in 1991.

A further concession is also embodied in the August, 1998 Security Council Resolution, namely that U.N. Secretary General Kofi Annan would name international "observers" to "monitor" the Scottish judges' conduct of the trial. Whatever the individual qualifications of the five trial observers named to date—and one of them is reported to have served as lawyer for Libya's U.N. mission in New York—the fact remains that this concession is an insult to the entire Scottish judicial system. The idea that Scottish justice may not be up to Libya's high standards of due process, or that there is some "international" standard that is somehow better than Scotland's (and, implicitly, America's) should have been flatly unacceptable to the Administration.

An equally bad precedent is that the United States and the United Kingdom also conceded that, if convicted and imprisoned, the defendants would be "monitored" by the United Nations. Perhaps Gadhafi is unfamiliar with the concept, but in nations where the rule of law prevails, prisoners generally are required to be treated humanely and are allowed to consult with counsel, to practice their religions, to receive legitimate visitors, and the like. For understandable security reasons, prisoners are not treated uniformly. Convicted murderers do face different circumstances than tax evaders. Nonetheless, the United Kingdom still qualifies as a democratic, civilized-enough place that it can be expected to meet its own legal standards.

The notion that Scottish prisons might not meet Libyan norms is breathtaking. Bear in mind also that the United States is already under criticism at the United Nations for even permitting the death penalty, let alone the way it is administered. The Pan Am 103 precedent raises the prospect that controversial cases with the slightest international coloration will be subject to calls for U.N. monitoring or oversight. What seems at first like a slight concession to Gadhafi's peculiar sensitivities is actually a potentially open-ended invitation to global entanglement in our criminal justice system.

Finally, and worst of all, Secretary Albright and her diplomats acquiesced in a letter sent by Secretary General Kofi Annan to Gadhafi, which essentially guaranteed Gadhafi that he would not be linked to the murders at the trial. This letter (which has now apparently been classified by the Department of State) has never been made public, and it is unclear whether it was co-signed by American and British diplomats or simply "cleared" by them in draft. In any event, compounding her many other blunders, the Secretary has waged a full-scale war against the Pan Am 103 families, several Members of Congress, and numerous journalists who have been trying to obtain a copy of the Annan letter. This policy of compromising with Gadhafi but stonewalling American family members has only increased concerns about what the Annan letter actually says.

Based on revelations to the Pan Am 103 families before the Annan letter was classified, we can conclude with some confidence that the Secretary General has effectively insulated Gadhafi from criminal liability for the bombing, which many believe he personally ordered. The Annan letter is said to promise Gadhafi that the prosecutors' conduct of the trial will in no way "undermine" the Libyan regime. It is inconceivable that our Department of Justice willingly agreed to limitations on the prosecutors, and Attorney General Janet Reno acknowledged as much last fall in a briefing to the Pan Am 103 families. Nonetheless, our diplomats have agreed that the public trial of the hit men will be limited by vague words that mean we may never learn the full story.

Certainly, the United States has, at times, decided not to proceed with criminal trials that might have had an adverse impact on national security. Because of concerns about protecting intelligence sources and methods, or because of overriding foreign policy priorities, even clearly winnable prosecutions have been abandoned. Such decisions reflect tough assessments as to when critical national interests legitimately trump criminal-justice priorities. But what the Clinton Administration has accepted here is something far different. Its concessions to Gadhafi (albeit through its chosen agent, the U.N. Secretary General) are made to a potential defendant, or at least a co-conspirator, in the murder that is the very subject of the investigation.

By knuckling under to Libya's demands, President Clinton has left to Scottish judges the ticklish job of adjudicating Libyan objections at trial to particular questions, witnesses or exhibits, any of which might be said to "undermine" the Libyan

government. That is not only irresponsible, but disingenuous. On what basis could any common-law judge legitimately rule on such a fundamentally political question? Moreover, if the court rules “incorrectly” from Libya’s perspective, is the deal off? Even worse, if the court rules “correctly” from Libya’s perspective, will the prosecution’s case be fatally weakened, and the defendants walk? As a precedent for future negotiations with terrorists (which we supposedly abjure), this new “Gadhafi Clause” will become an irreducible minimum condition for regimes abetting violence.

Not only are our unilateral, unreciprocated concessions unwise in and of themselves, they also represent a series of small but continuing victories for Gadhafi in his unending efforts to “internationalize” the trial, and thus take it out of the purview of either Scottish or American justice. Gadhafi had consistently argued that the two Libyans he handed over could not get a “fair trial” from Scottish or American courts, and every concession made to this absurd contention strengthened the international perception that perhaps we were also unsure that they could receive a fair trial. Unfortunately, the pattern of American concessions we have seen here will inevitably be cited as a precedent in similar situations in the future, and therefore constitute yet another step on the treacherous path toward removing the responsibility for criminal justice from nation-states, and internationalizing it in potentially irresponsible and unaccountable hands.

4. The disintegration of American policy toward Libya means that the Administration has no policy if the Scottish judges at Camp Zeist acquit the Libyan defendants

This result is entirely possible, given the high standard of proof required for convictions, the lack of cooperation from the Libyan government, and the prosecutors’ needs to shield sensitive intelligence sources and methods from exposure. A finding of “not guilty” (or a so-called “Scottish verdict”) is not the legal or moral equivalent of finding the defendants “innocent,” but no one will recognize that distinction in the trial’s aftermath. Gadhafi and his fellow thugs will have beaten the judicial system, and Secretary Albright can proceed toward diplomatic normalization unencumbered by any further obligations to the Pan Am 103 families.

Indeed, even if the two intelligence operatives are convicted, Gadhafi will almost certainly escape prosecution, even though he is widely believed to have given the direct order that led to Pan Am 103’s destruction. This fact alone demonstrates the intellectual and political poverty of the Administration’s position.

Inexplicably, only a few Members of Congress have even monitored, let alone opposed, the collapse of America’s opposition to Libya’s outrages. Nor has it been the subject of debate in the presidential campaign, at least until now. While the defendants on trial at Camp Zeist may ultimately be convicted, there is no prospect of adequate justice while Gadhafi remains untouched. Since that seems sadly likely, we need a larger debate about how America asserts its interests and protects its citizens from attack, by terrorists or anyone else. This requires an American posture that accepts military force rather than prosecution as the preferred response, that is willing and even inclined to respond unilaterally to be effective, and that has an attention span long enough to allow us to win through to vindication. Questions of international terrorism—and Libya particularly—fully warrant presidential campaign debate.

Senator BROWNBACK. Thank you very much, Mr. Bolton. I appreciate your comments too about holding the hearing. I think it is an important one. I worry about it in the specifics of the case of the victims. I worry about it in general in the case of what U.S. policy drift is doing toward rogue regimes around the world.

Mr. Bolton, you stated that a number of steps have been taken toward normalizing the relationship between the United States and Libya. The Ambassador just ahead of you basically denied and stated—I am not sure how to really frame it other than we have not done that yet I guess would probably be the best way to categorize it.

What items, what steps do you see that the administration has taken toward normalizing the relationship with Libya?

Mr. BOLTON. Well, I think certainly the consular visit was about as clear an example as you could get, that they were in there for

a very brief period of time just to check the box that they had made a trip to Libya.

I think also you have to look at what the administration has done over the course of events since August 1998 to try to move toward a suspension of Security Council sanctions. That was the first step that had to be undertaken because the next steps obviously, having achieved their objective in the multilateral arena, are now to deal with the ILSA sanctions and the other matters that Congress has been so involved in.

But I fear that the pattern has already been laid out by Prime Minister Blair's Government. It is no secret, in conversations I have had with UK diplomats and others, that UK and U.S. policy on Libya is being very closely coordinated. The United Kingdom recently returned its Ambassador to Libya. The top British diplomat in the Foreign Office has just recently visited Libya, may still be there, looking for facilities and the other necessary administrative support to greatly expand the UK mission there. The entire European Union is moving back toward full diplomatic relations, and indeed, just a few months ago, we narrowly avoided the embarrassment of the head of the European Commission inviting Qadhafi to come to Brussels for consultations. There is no question that commercial interests in Europe are looking avidly at a substantial increase of investments in Libya once the sanctions really are lifted permanently. And we have already heard from officials of American companies, who I think are quite naturally pursuing their economic objectives, and do not want to see Europeans get business, who are not concerned with the larger policy issues that the Senate and the executive branch should be.

All of this moves in the direction of recognition. This is a pattern I have seen in case after case as the United States moves from opposition to a regime toward full diplomatic recognition. No step is inevitable. I would not want to be heard to say that it is, and I think vociferous opposition from the Senate and from the House can have a major impact on the thinking at the State Department. At least it should. It always had a major impact when I was there, I can tell you that. I hope that this body and the other body continue their very close scrutiny of what is going on because it is not inevitable and it can be stopped.

Senator BROWNBACK. Ms. Bernstein, I asked the Ambassador a question about compensation discussions with the victim families and the State Department's involvement or putting forward any sort of level of compensation. Are you familiar with any of these discussions, and do you have any thoughts on the State Department's role in these discussions?

Ms. BERNSTEIN. I am not familiar with any of those discussions. I am not surprised. I would not be surprised to learn that there have been. As I indicated, in the meeting that took place in February, which I know was attended by a representative from Congressman Rahall's office, because he is one of the Congressmen who expressed an interest to traveling to Libya, this did come up.

As I mentioned, I think it is a cynical attempt to buy the families off, and I think that it is perceived as kind of the last stumbling block, or one of the last stumbling blocks, before normal relations can be resumed. Although I cannot presume to speak for all the

American families, I really do believe in my heart that family members are not going to be silenced in that way, and that is how I perceive this. It would be an attempt to silence us.

Senator BROWNBACK. To buy you off.

Ms. BERNSTEIN. Absolutely, absolutely.

Senator BROWNBACK. Well, let me thank both of you for coming here and particularly, Ms. Bernstein, for all that you have been through in this horrible episode in U.S. history, the worst air terrorism act in the history of the world that has occurred and the families that were torn apart through this and the grief and lack of resolution in the years that have ensued. I am hopeful we can continue to try to press toward getting real answers to what happened and people really responsible for it ultimately, all the way up the chain being held responsible for what happened to the families, which is ultimately what all of us want to get and want to see, that we do not just try to paper over something or pay off somebody in an effort to rush toward something that is going to prove in the end to be something of a bad move and a very bad mistake for the United States to re-engage this government that has shown no remorse, no resolution to say that this was wrong and that we are going to deal with it. You have my pledge for us to continue to proceed to get to the final justice of this matter.

Ms. BERNSTEIN. Thank you, and I appreciate the opportunity to speak to you this morning. I will convey what you have said to the family members I will be joining shortly to watch the trial proceeds today.

Senator BROWNBACK. Senator Torricelli.

Senator TORRICELLI. Mr. Chairman, I do not have any questions only to express, much as you did, that Ms. Bernstein, your family is very fortunate that they have had in you such an advocate and articulate spokesperson to deal not only with the tragedy of your family but all of these families.

Mr. Bolton, thank you as well for your analysis of the situation.

It is an extraordinary thing that the United States entered the 20th century threatening war against Mr. Qadhafi's predecessors in North Africa because of the kidnapping of a single American woman. A century later, 293 people are murdered and we deal with it like it is an individual law enforcement problem. I do not know how we came to the circumstances where a plane or a ship of the United States can be destroyed and our citizens murdered and it is anything less than an act of war. It was a profound misjudgment in the Bush administration not to deal with this as an attack upon the United States. I trust there has been a lesson learned.

One likes to think that in our country policy evolves and wisdom grows. Each generation before has dealt with these situations differently. This was, after all, with different technology at a different time, what brought the United States into World War I. Ships of the United States were attacked, and I might point out lesser numbers of lives were lost. The United States dealt with this as an attack upon our country.

From the outset of this, no one has had any doubts that ultimately responsibility for this act was with the Libyan Government. It was not necessary to know who or how or under exactly what circumstances to know that this was an act of war against the

United States and its Government. That is how it should have been dealt with. Indeed, as you pointed out, Mr. Bolton, that is how Ronald Reagan dealt with it. I trust a future American President, having seen the various lessons and how different administrations dealt with similar facts, will have a different resolve.

But like our Chairman, Senator Brownback, I want you and each of the families to know, Ms. Bernstein, that we are not going to leave this matter either. Our eyes will be closely focused on how the administration deals with this issue, and we are not going away.

Thank you, Mr. Chairman.

Senator BROWNBACK. Thank you, Senator Torricelli.

Thank you very much. The hearing is adjourned.

[Whereupon, at 11:33 a.m., the subcommittee was adjourned.]

