

# Viewpoint: Extradite Lockerbie Bomber for Sake of Justice

Lawrence J. Siskind

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The United States has only a limited ability to influence whether calm or chaos follows the ascension of a new regime in Libya. But there is one thing we can and should try to influence: the fate of Abdelbaset al-Megrahi, the man convicted of the 1988 bombing of PanAm flight 103 over Lockerbie, Scotland. Even though recent reports suggest that he is near death, the U.S. owes it to his victims to make every effort to secure his extradition to this country. He should spend his last days — or hours — here, under American justice.

Al-Megrahi, a former intelligence officer and head of security for Libyan Arab Airlines, was convicted by a Scottish court in connection with the Lockerbie bombing. In its civilian death toll, this tragedy was the bloodiest terrorist attack in modern history before 9/11: 270 people were killed, including 189 Americans. Although no cameras were in the nighttime sky to capture their deaths, they were every bit as horrific as those at the World Trade Center. Forensic investigators found evidence that the flight crew, some of the flight attendants, and 147 passengers survived the bomb blast and depressurization of the aircraft, and were still alive as the shattered remnants made their six-mile, two-minute descent to earth.

Al-Megrahi was released by the Scottish authorities on "humanitarian" grounds on Aug. 20, 2009, to return to Libya. According to his doctors, al-Megrahi suffered from pancreatic cancer and had only three months to live. Under the terms of his release, he was to remain at home and provide monthly medical reports to the Scottish authorities. Upon his arrival in Libya, he received a hero's welcome. Saif al-Gadhafi, the ex-dictator's son, triumphantly claimed credit for his release. The regime housed him in a luxurious seaside villa. The Mediterranean breezes apparently bore medicinal qualities, and the three months have stretched into two years. In the intervening years, al-Megrahi was periodically trotted out at rallies in support of his erstwhile master Gadhafi while he was still in power.

Since al-Megrahi has already been tried and convicted in Scotland, why is the United States entitled to demand his extradition? The answer lies in the strange circumstances under which the U.S. ceded jurisdiction over his prosecution.

The United States could have and should have asserted jurisdiction. Under federal law, any attack on an aircraft of a U.S. carrier or its passengers is subject to "special aircraft jurisdiction," regardless of where the attack occurs. That is why, for example, Richard Reid, the notorious "shoe bomber," was tried and convicted in a federal court in Massachusetts, even though Reid is a British subject and his crime occurred over the

Atlantic on a flight from Paris. Al-Megrahi's crime was committed on a PanAm aircraft, and more than two-thirds of his victims were American. There were solid grounds to try him here.

The reason he was not stems from diplomatic realpolitik, not law.

After the bombing, al-Megrahi made his way back to Libya. Gadhafi refused to hand him over to the U.S. for trial. There was no way, short of a military intervention, to extract him. So the U.S., along with the United Kingdom, entered into a bargain with Gadhafi. In September 1998, in a letter to the U.N. Secretary General, the U.S. and the U.K. expressed their "grave concern" that almost 10 years after the bombing the accused had not yet stood trial, and blamed Libya for refusing to hand him over. They noted that "in the interest of resolving this situation in a way that will allow justice to be done, our Governments are prepared, in an exceptional measure, to arrange for [al-Megrahi] to be tried before a Scottish court sitting in the Netherlands." As a condition of this arrangement, the U.S. and U.K. insisted that al-Megrahi "if found guilty ... will serve his sentence in the United Kingdom." He could return to Libya only if "acquitted, or in the event of the prosecution being discontinued by any process of law." This document formed the basis of a treaty registered with the Secretariat of the United Nations, under which al-Megrahi's trial proceeded.

The trial, before Scottish judges sitting in a special court in Camp Zeist, the Netherlands, in accordance with the treaty, began on May 3, 2000, and lasted 36 weeks. Al-Megrahi was convicted and sentenced to life in prison. He served a total of 8 1/2 years — about 11 days per victim.

The release of Abdelbaset al-Megrahi was authorized by the Scottish government, on so-called "humanitarian" grounds, grounds which time has proved dubious. But whether al-Megrahi had three months to live or two years or 20 years doesn't matter. What matters is that al-Megrahi did not serve his sentence in the United Kingdom, as required under the 1998 agreement. His release, engineered with the active participation of the Gadhafi regime, nullified that agreement. The United States never would have ceded jurisdiction had it known that the accused would be released to a luxurious form of house arrest in Libya.

Because the agreement has been voided, the United States is entitled to demand that al-Megrahi be extradited to this country to face American justice — which recognizes no statute of limitations for murder, and provides for capital punishment for deaths resulting from air piracy.

But even if the United States is entitled to demand his extradition because of the nullification of the 1998 agreement, wouldn't his retrial in this country constitute double jeopardy, a risk prohibited under the Fifth Amendment?

No, it would not. Double jeopardy means being tried twice by the same sovereign for the same offense. The federal government could not try al-Megrahi twice, but it could try

him for murder under federal law even after he was convicted by a state for the same offense under state law. That explains why the police officers who beat Rodney King could be convicted under federal law even after they had been acquitted in a California state trial. The same principle applies in the international sphere. If al-Megrahi had been convicted under international law, he could not be retried in this country under that same body of law. But, in accordance with the 1998 agreement, al-Megrahi was convicted under Scots law. The United States is entitled to try him under federal law without violating the ban on double jeopardy.

Reportedly, the new regime has said that it will not hand him over. But that remains to be seen. So far, our government has made no formal request. And the regime is desperate for financial assistance. If our government made it clear that we viewed al-Megrahi's extradition as a fundamental condition to future support, it is likely that the regime would find reasons to comply. It has no incentive to protect one of Gadhafi's most loyal henchmen.

The question is not whether the United States is legally entitled to demand extradition, but whether it makes sense to do. What purpose would be served by a invoking a legal process that might be interrupted by al-Megrahi's death from cancer?

The purpose would be the same purpose served by hunting ex-Nazi mass murderers into their doddering old age. Some criminals should not be allowed to quit this earth until they face justice. Al-Megrahi's early release and return to Libya shows that he has not yet done so.

Extradition may seem futile. But even futile acts sometimes carry important symbolic value. At the end of "The Maltese Falcon," Sam Spade explains why he turns over Brigid O'Shaughnessy to the police for the murder of his partner, Miles Archer, a man Spade did not like or respect. "When a man's partner is killed," Spade says, "he's supposed to do something about it. It doesn't make any difference what you thought of him. He was your partner and you're supposed to do something about it. And it happens we're in the detective business. Well, when one of your organization gets killed, it's bad business to let the killer get away with it, bad all around, bad for every detective everywhere."

The length of al-Megrahi's remaining time doesn't make any difference. What matters is that he killed 270 innocents, among them 189 Americans. It's bad business to let him get away with it, bad all around.

*Contributing writer Lawrence J. Siskind, of San Francisco's Harvey Siskind, specializes in intellectual property law. He can be reached at [recorder-editor@alm.com](mailto:recorder-editor@alm.com).*