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Who did bomb Pan Am 103?

Hugh Miles

A three-year review of the Lockerbie trial will end in a fortnight. It is expected to rule that the bomber's conviction is unsafe, prompting a new hearing in the appeal court and a political crisis, writes Hugh Miles

On December 21, 1988, Pan Am Flight 103 was 38 minutes into its journey from Heathrow airport to New York when it was blown up at 31,000ft. The explosion was so powerful the nose of the aircraft was torn off.

Within three seconds of the bomb detonating, the cockpit, fuselage and number three engine were falling separately out of the sky. The fuselage of the plane landed on a row of family houses in the small Scottish town of Lockerbie.

The impact was such that the British Geological Survey registered a seismic event measuring 1.6 on the Richter scale. The wing section of the Boeing 747, loaded with enough fuel for a transatlantic flight, hit the ground at more than 500mph and exploded in a fireball that lit the sky. The cockpit, with the first-class section still attached, landed beside a church in the village of Tundergarth.

Over the next few days rescuers made a fingertip search of the crash site: 243 passengers, 16 crew members and 11 people on the ground had been killed. Bodies and debris were strewn along an 81-mile corridor of Scottish countryside.

Ten thousand pieces of debris were retrieved; each was meticulously logged. Among the items recovered were the remains of a Samsonite suitcase, which investigators later established had been used to transport the bomb. It had also contained clothes, which were subsequently traced to the shop of a Maltese man called Tony Gauci. He later became a key prosecution witness. Fragments of a circuit board and a Toshiba radio were also recovered and identified as parts of the bomb.

Abdelbaset Ali Mohamed al-Megrahi is still the only person to have been found guilty in connection with the attack. Convicted by three Scottish judges sitting in a specially convened court in the Netherlands, he is six years into a 27 year jail sentence with one failed appeal behind him. Lawyers, politicians and relatives of Lockerbie victims now

believe the former Libyan intelligence officer is innocent.

Robert Black QC, an emeritus professor of Scottish law at Edinburgh University, was one of the architects of the original trial in Holland. He has closely followed developments since the disaster happened and in 2000 devised the non jury trial system for the al-Megrahi case.

Even before the trial he was so sure the evidence against al-Megrahi would not stand up in court that he is on record as saying a conviction would be impossible.

When asked how he feels about this remark now, Black replied: "I am still absolutely convinced I am right. No reasonable tribunal, on the evidence heard at the original trial, should or could have convicted him and it is an absolute disgrace and an outrage what the Scottish court did."

Al-Megrahi lost his appeal in 2002, but under Scottish law is entitled to a further legal review to be conducted by the Scottish Criminal Cases Review Commission (SCCRC), an independent public body made up of senior police officers and lawyers. Its job is to re-examine cases where a miscarriage of justice may have occurred: it handles cases after the appeal process has been exhausted and if it finds evidence that a miscarriage of justice may have taken place it refers the case to the High Court to be heard again.

Al-Megrahi applied to the SCCRC for a review of his case in 2003 and the commission has been reinspecting evidence from the trial for the past four years.

It will submit its findings at the end of June. It looks likely the SCCRC will find enough grounds to refer al-Megrahi's case back to the appeal court. The Crown Office has already begun reinforcing its Lockerbie legal team in anticipation of a referral.

If al-Megrahi is granted a second appeal, it will be held in Scotland before a panel of Scottish judges and without a jury. If the glacial pace of proceedings in the past is anything to go by, it will probably not be heard before the summer of 2008.

Al-Megrahi's defence team would be ready to launch an appeal in a matter of weeks, but the prosecution would seek to delay the hearing for as long as possible. If an appeal takes place, al-Megrahi's defence team will produce evidence not available at the time of the first appeal, which seems likely not only to exonerate al-Megrahi but also to point the finger of blame at the real perpetrators of the Lockerbie bombing and reveal some inconvenient truths.

Since al-Megrahi's last appeal, many thousands of pages of reports detailing freight and baggage movements in and out of Frankfurt airport have been handed over to the defence. Largely in German and often handwritten, the papers were translated by the crown at the taxpayer's expense, but the crown refused to share the translations with the defence and left it no time to commission its own.

The Privy Council's judicial committee, made up of law lords and senior judges, has declared that the crown's refusal to disclose this evidence is a breach of the European convention on human rights. More damaging still, an unnamed senior British police officer

-known to be a member of the Association of Chief Police Officers in Scotland (Acpo), which implies his rank is assistant chief constable or higher -has testified to al-Megrahi's defence team that crucial evidence at the trial was fabricated. If the SCCRC finds that the prosecution played foul, the crown may decide not to continue with its case, allowing al-Megrahi to be freed immediately.

This anonymous officer's testimony chimes with the well-trodden theory that the American government had a hand in fixing the trial. Hans Kochler, the United Nations' observer at Camp Zeist, reported that the trial was politically charged and the verdict "totally incomprehensible".

Whatever happens, al-Megrahi may not have to wait long. As soon as a further appeal is scheduled, he can make an application to be released from custody: the convicted Lockerbie bomber might well be free this summer. If he is exonerated, many tricky questions will resurface, not least what to do about the Pounds 1.3 billion compensation paid by Libya to relatives of the victims of the bombing.

Then there is the question of who really bombed Flight 103.

In the first three years following the bombing, before a shred of evidence had been produced to incriminate Libya, the Dumfries and Galloway police, the FBI and several other intelligence services around the world shared the belief that the Lockerbie bombers belonged to the Popular Front for the Liberation of Palestine General Command (PFLP-GC), a Palestinian rejectionist organisation backed by Iran.

The PFLP-GC is headed by Ahmed Jibril, a former Syrian army captain. It is headquartered in Damascus and is closely allied with the Syrian president and other senior Syrian officials.

In the 1970s and 1980s the PFLP-GC carried out a number of raids against Israel, including a novel hang-glider assault launched from inside Lebanon. Lawyers, intelligence services and diplomats around the world continue to suspect Jibril - who has even boasted he is responsible - was behind Lockerbie.

The case against Jibril and his gang is well established. It runs like this. In July 1988, five months before the Lockerbie bombing, the USS Vincennes in the Gulf shot down an Iranian Airbus, apparently mistaking it for an attacker. On board Iran Air Flight 655 were 270 pilgrims en route to Mecca. Ayatollah Khomeini vowed the skies would "rain blood" in revenge and offered a Pounds 5m reward to anyone who "obtained justice" for Iran. The suggestion is that the PFLP-GC was commissioned to undertake a retaliatory bombing. We know that two months before Lockerbie, a PFLP-GC cell was active in the Frankfurt and Neuss areas of west Germany. On October 26, 1998, German police arrested 17 terrorist suspects who, surveillance showed, had cased Frankfurt airport and browsed Pan Am timetables. Four Semtex-based explosive devices were confiscated; a fifth is known to have gone missing. They were concealed inside Toshiba radios very similar to the one found at Lockerbie. One of the gang, a Palestinian known as Abu Talb, was later found to

have a calendar in his flat in Sweden with the date December 21 circled.

New evidence, now in the hands of al-Megrahi's defence, proves for the first time that Abu Talb was in Malta when the Lockerbie bombing took place. The Maltese man whose testimony convicted al-Megrahi has also identified Abu Talb.

During the trial, he had a strange role. As part of a defence available in Scottish law known as "increditation", Abu Talb was named as someone who rather than the accused -might have carried out the bombing. At the time he was serving a life sentence in Sweden for bombing a synagogue, but he was summoned to Camp Zeist to give evidence. He ended up testifying as a prosecution witness, denying he had anything to do with Lockerbie. In exchange for his testimony, he received lifelong immunity from prosecution.

Other evidence has emerged showing the bomb could have been placed on the plane at Frankfurt airport, a possibility that the prosecution in al-Megrahi's trial consistently ruled out (its case depended on the suitcase containing the bomb having been transferred from a connecting flight from Malta). Most significantly, German federal police have provided financial records showing that on December 23, 1988, two days after the bombing, the Iranian government deposited Pounds 5.9m into a Swiss bank account that belonged to the arrested members of the PFLP GC.

When Libya handed al-Megrahi over for trial, sanctions on Libya authorised by the UN security council were suspended and diplomatic relations with Britain restored.

Tony Blair claims the Libyan detente was one of his most important foreign policy victories, and last month he swung by Tripoli to meet again with Libya's leader.

Gadafi has always said al-Megrahi is not the Lockerbie bomber and he should be allowed to return home. If the court that convicted al-Megrahi now reverses its decision, Libya would clearly have a case for demanding its money back. Since recovering the compensation from the relatives would be unthinkable, it is more likely Libya would pursue those responsible for the miscarriage of justice.

"What they might try to do," Black suggests, "is to recoup the money from the British and American governments, who after all are responsible for the wrongful conviction in the first place. They paid that money on the basis of a miscarriage of justice perpetrated by the British courts."

Al-Megrahi's acquittal on appeal would not ipso facto make a compelling case for Libya to have its money back: even if guilt can't be proved beyond reasonable doubt -the test of the criminal burden of proof -it could still be shown that it was more likely than not (which is the burden applied to civil cases such as compensation cases). If al-Megrahi is acquitted, he will also have the right to sue for wrongful conviction. He could claim tens of thousands of pounds in compensation.

The Crown Office, headed by the Scottish lord advocate, is responsible for what happened, which means al-Megrahi would sue the Scottish executive. The lord advocate is now a Scottish minister, whereas before he -now she -was a law officer of the UK

government. The executive might refuse to pay, blaming Westminster. But Westminster would argue Lockerbie is, and always has been, a Crown Office matter and the UK government has no say. A political storm is on its way, especially now the SNP is in charge in Scotland.

Since the case against al-Megrahi was so weak, it is hard to understand how the judges who presided over the trial could have got it so wrong. Another controversial aspect of the case may also be re-examined: the policy on disclosure. Scotland does not have a proper system of disclosure of information.

In England and Wales, the crown has to disclose all material to the defence. In Scotland, the crown is allowed to modify or withhold evidence if it considers that withholding is in the "public interest". At least the Scottish criminal justice system doesn't have the death penalty.

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