

Lockerbie appeal raises new questions

Steve James
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Judges have retired in the appeal by Abdelbaset Ali Mohamed al-Megrahi against his conviction last year for blowing up Pan Am flight 103 over Lockerbie, Scotland on December 22, 1988. The judges' verdict is due in March.

On January 31, 2001, three judges sitting in a specially constructed court in the Netherlands found Al-Megrahi guilty of planting a Semtex-packed cassette player on board the Boeing 747, which destroyed the plane, killing its 259 passengers and crew as well as 11 Lockerbie residents. Al-Megrahi's co-accused and alleged co-conspirator Amin Khalifa Fhimah was acquitted of the charges in that trial.

The appeal hearing, which began on January 23 this year, was held in Camp Zeist, the Netherlands, the same former US base that hosted the original trial. Under normal legal precedents, the appeal would undoubtedly result in the release of al-Megrahi. Fresh evidence presented during the hearing further undermined the already flimsy circumstantial basis for al-Megrahi's original conviction in what was a politically motivated verdict primarily designed to retrospectively justify more than a decade of US and UN sanctions against Libya.

In the original verdict, the trial judges ignored the numerous contradictions, and speculative leaps in the case against al-Megrahi and rejected circumstantial evidence pointing to other groups and individuals as having prepared the attack. Such was the political pressure to convict at least one Libyan that the judges rejected the "not proven" verdict, available to them in Scottish law, under which the trial was heard.

During the appeal, defence lawyer William Taylor set about methodically undermining the judges' published verdict, arguing that it constituted a miscarriage of justice. In particular, Taylor concentrated on the claim made in the original trial that the suitcase containing the bomb was loaded by al-Megrahi onto a feeder flight, KM180, at Luqa airport in Malta and was subsequently transferred on to Pan Am 103.

In concurring with this claim, the judges had rejected any possibility that the bomb could have been loaded at either Frankfurt in Germany, where the feeder flight would have passed on luggage to Pan Am 103, or at London, Heathrow,

where the 747 stopped before making its onward transatlantic flight. In their published verdict, however, the judges admitted, "The absence of any explanation of the method by which the primary suitcase might have been placed on board KM180 is a major difficulty for the Crown [prosecution] case, and one which has to be considered along with the rest of the circumstantial evidence in the case."

In the appeal Taylor showed that records of luggage handling at Frankfurt were sufficiently vague for several flights to have contributed luggage to PA103A. Trial judges had also ignored evidence from an experienced worker scanning all luggage loaded into PA103A, who had insisted that no questionable radio items appeared—the bomb is alleged to have been in a Toshiba radio cassette—he said.

The defence focused on evidence of a bag comparable to the one that allegedly contained the bomb being loaded into a PA103 luggage container under confused circumstances at London's Heathrow airport.

This aspect of the appeal was dramatically underscored by new evidence of security breaches at Heathrow. After hearing written statements, the judges agreed to hear from several Heathrow workers reporting on evidence of a break-in to the luggage storage area in the early morning of December 21, 1988, revealing a route through which a bomb-laden suitcase could be smuggled into the Pan Am luggage area.

Giving evidence, former Heathrow airport security guard, Ray Manly insisted that a padlock on the door between a Heathrow passenger terminal and a secure luggage area within a short walking distance of the building from where PA103 was loaded had been cut the night before the explosion. Manly stated that a senior police official had interviewed him about the broken padlock in January 1989. Police had taken possession of the padlock, but it had subsequently disappeared and was not produced during the original trial, the appeal heard. This had enabled the prosecution to successfully question Manly's recollection of events, despite other witnesses corroborating his testimony of a break-in.

Evidence of a break-in at Heathrow seriously compromises

the Crown's case as it presents a much stronger, more internally coherent, circumstantial basis for the bomb being loaded in London rather than Malta. No suggestion was made of who might then have bombed PA103, or why.

Media coverage of the appeal has varied wildly. The British press are reporting the appeal relatively even-handedly. The entire proceedings have been viewable on line via the BBC's website. Across the Atlantic, however, the appeal into the greatest mass killing of US citizens prior to September 11 has been met with near complete silence. Whilst the *New York Times* has not reported the appeal at all, a brief comment in the *Washington Post*—the paper's only coverage of the recent hearing—attacked even the distorted legal processes at Camp Zeit for being unnecessarily lenient in its observance of certain democratic norms.

Even though no jury had sat in on the original trial, the *Post* complained that the observance of certain features of due process—the right to a public hearing, centred on the weighing up of evidence and including the defendant's right to appeal—represented an obstacle to the “war against terror”. In a politically loaded comment aimed at justifying the draconian measures introduced by the Bush administration in the wake of the terror attacks on New York and Washington, the *Post* argued, “Megrahi's trial and the acquittal of a fellow defendant illustrate the expense and time of securing convictions in terrorism cases where defendants receive full access to Western courts. In the post-Sept. 11 war on terrorism, the United States has said it intends to try some foreign suspects before military tribunals.”

For its part, the US government is treating the initial guilty verdict as a platform from which to extract a full admission of guilt from Libya, and is treating the appeal with complete contempt. Simultaneous with the first hearings, on January 23, an unnamed State Department official told *Associated Press* that the US would not consider removing Libya from its list of “terrorist” nations unless it paid compensation and accepted guilt for Lockerbie. The official, describing talks by US Assistant Secretary of State for Near East Affairs William Burns, said that even accepting guilt would not remove Libya from the list. “They can't get off the terrorism list without doing it, but they won't necessarily get off the list if they do do it...” the same official commented. *USA Today* suggested that the price for Libya's removal might be \$6 billion.

This ultimatum stand is despite the appeal hearing raising further questions about the original verdict. Shortly before the appeal commenced, presiding judge Lord Cullen rejected a call from Marina de Larracochea, whose sister was an airhostess on PA103, for the appeal to consider widening the scope of its investigation. Miss de Larracochea wanted the

court to hear further evidence examining why the original trial did not consider evidence on the failure of the intelligence services to prevent the bomb being loaded. She told the judges, “key and central aspects of the case were repeatedly shielded.”

Over the years there have been numerous reports raising allegations that the preparations for the Lockerbie attack were known to the intelligence services of several Western governments or even that the US played a direct part in the explosion. There are a number of alternative scenarios as to who carried out the bombing that have never been fully explored, including the defence's insistence that the bombing was authored by a Palestinian group.

In May 2001, Hans Koechler, a United Nations observer to the Camp Zeit trial, made a devastating assault on the original verdict, describing it as politically motivated, irrational, and subject to international power politics. Koechler, appointed by Kofi Annan, is a philosophy lecturer and a founder member of the International Progress Organisation think tank. He attacked the failure of the court, including the defence team, to seriously investigate the special defence of incrimination i.e. that other individuals and groups, particularly the Popular Front for the Liberation of Palestine-General Command (PFLP-GC), were responsible for the bombing. He noted the reports which emerged late in the trial, from the leading prosecution official that “an unnamed foreign government” had information relating to the defence case, and that this information was never revealed or investigated, nor followed up by the defence itself. Rather, in Koechler's view, “the strategy of the defence team by suddenly dropping its ‘special defence’ and cancelling the appearance of almost all defence witnesses...is totally incomprehensible; it puts into question the credibility of the defence's actions and motives.”

The unearthing by Al-Megrahi's legal team of the Heathrow evidence blows further holes in his original conviction and when judged by the legal norm of proving guilt beyond reasonable doubt, renders it unsound.



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