

# Pan Am 103 Verdict: Justice or Politics?

**From the Archive:** With the death of Ali al-Megrahi over the weekend, the Western press was again filled with references to him as the “Lockerbie bomber,” even though the New York Times finally conceded how dubious his conviction was. At Consortiumnews.com, William Blum made that point in real time.

By William Blum (Originally published Feb. 5, 2001)

The newspapers were filled with pictures of happy relatives of the victims of the 1988 bombing of PanAm 103.

A Libyan, Abdelbaset Ali Mohamed al-Megrahi, was found guilty of the bombing by a Scottish court in the Hague, his co-defendant, Al Amin Khalifa Fhimah, being acquitted. At long last there was going to be some kind of closure for the families.

So what’s wrong with this picture?

What’s wrong is that the evidence against Megrahi was stretched thin to the point of transparency. Indeed, the court verdict might be dubbed Supreme Court II (after the infamous *Bush v. Gore* case), another instance of non-judicial factors clouding judicial reasoning.

The three Scottish judges cannot have relished returning to the United Kingdom after finding both defendants innocent of the murder of 270 people, largely from the U.K. and the United States. Not to mention having to face dozens of hysterical victims’ family members in the courtroom.

As with any horrendous crime, there’s a desire for someone to be punished. That’s an especially strong sentiment when a defendant is from an unpopular racial or ethnic group, in this case, a Libyan. The three judges also knew the desires of the White House and Downing Street as to the outcome.

One has to read the entire 26,000-word Opinion of the Court which accompanied the verdict, as well as being very familiar with the history of the case going back to 1988, to appreciate what the judges did.

## The Case

The key charge against Megrahi – the *sine qua non* – is that he caused a suitcase with explosives to be loaded at Malta airport and tagged it so it would pass through Malta, Frankfurt and London airports without an accompanying passenger and without being detected.

That by itself would have been a major feat and so unlikely to happen that any terrorist with any common sense would have found a better way. But aside from anything else, we have this – as to the first step, loading the suitcase at Malta: there is no witness, no video, no document, no fingerprints, no forensic evidence of any kind linking Megrahi – or anyone else – to such an act.

And the court admits it: “The absence of any explanation of the method by which the primary suitcase might have been placed on board KM180 [Air Malta] is a major difficulty for the Crown case.”

The case for the suitcase’s hypothetical travels must also deal with the fact that, according to Air Malta, all the documented luggage on KM180 was collected by passengers in Frankfurt and did not continue in transit to London, and that two PanAm on-duty officials in Frankfurt testified that no unaccompanied luggage was introduced onto PanAm 103A, the feeder flight to London.

Moreover, under security requirements in 1988, unaccompanied baggage was subjected to special x-ray examinations, plus – because of a recent event – the security personnel were on the lookout specifically for a bomb secreted in a radio, as was the case with the PanAm 103 bomb.

To counter this evidence, the judges cite some sketchy and confusing notations about the movement of luggage wagons within the Frankfurt airport. The prosecution introduced these records to suggest that some unidentified luggage still might have gone from KM180 to a baggage clearinghouse at the airport and theoretically could have gone from there to PanAm 103A.

But the prosecution never called the official who made the key notations and was responsible for processing the baggage to explain what the sketchy records might mean. Nevertheless, the judges seized on these notations to conclude that “the documentary evidence as a whole therefore clearly gives rise to the inference that an item which came in on KM180 was transferred to and left on PA103A.”

### **Heathrow Security**

The prosecution’s case encountered more complexities at Heathrow Airport outside London. Again there was no evidence that luggage originating from Malta was loaded onto PanAm 103.

The trial evidence also revealed that Heathrow had lax security around the “baggage build-up area” where luggage for PanAm 103 was stored prior to the flight. “The build-up area was adjacent to a roadway extensively used by persons within the airport,” the judges said. “In December 1988, it was busier than usual because construction work was in progress at the airport.”

The bin for the luggage was marked PanAm 103, according to testimony, so it was not a mystery where suitcases in the bin were headed. "There was no security guard outside the shed, so that the placing of items on the conveyor belt was unsupervised," stated the court opinion.

After loading suitcases into the bin, one of the baggage handlers testified that he left the area to have a cup of tea. "On his return, he saw that two cases had been added to the container," including one "brown or maroony-brown hardshell Samsonite-type case," which matched the description of the luggage believed to be carrying the bomb.

Testimony from baggage handlers was conflicting as to how the two bags got there, leaving open the possibility that the fatal bag could have been slipped into the PanAm 103 luggage bin in the poorly supervised environment at Heathrow.

The judges acknowledged that this could have happened, stating: "To achieve that, the person placing the suitcase would have had to avoid being detected, but the evidence indicates that a person in possession of a pass for the airside area would not be likely to be challenged, and there were a very large number of passes issued for Heathrow, a substantial number of which were not accounted for."

### **The Witness**

Requiring some sort of direct and credible testimony linking Megrahi to the bombing, the court placed great – nay, paramount – weight upon the supposed identification of the Libyan by a storekeeper in Malta, as the purchaser of the clothing found in the bomb suitcase.

But this storekeeper had earlier identified several other people as the culprit, including one who was a CIA agent. When he finally identified Megrahi from a photo, it was after Megrahi's photo had been in the world news for years.

Again, the court acknowledged the possible danger inherent in such a verification: "These identifications were criticised *inter alia* on the ground that photographs of the accused have featured many times over the years in the media and accordingly purported identifications more than 10 years after the event are of little if any value."

There also were major discrepancies between the shopkeeper's original description of the clothes-buyer and Megrahi's actual appearance. The shopkeeper told police that the customer was "six feet or more in height" and "was about 50 years of age." Megrahi was 5'8" tall and was 36 in 1988.

The judges acknowledged that the initial description "would not in a number of

respects fit the first accused [Megrahi]" and that "it has to be accepted that there was a substantial discrepancy." Nevertheless, the judges accepted the identification as accurate.

### **Suspicious Behavior**

The Opinion of the Court also placed considerable weight on the suspicious behavior of Megrahi prior to the fatal day, making much of his comings and goings abroad, phone calls to unknown parties for unknown reasons, the use of a pseudonym, etc. The three judges tried to squeeze as much mileage out of these events as they could.

But if Megrahi was indeed a member of Libyan intelligence, we must consider that intelligence agents have been known to act ... well, in mysterious ways, for whatever assignment they're on. The court, however, had no idea what assignment, if any, Megrahi was working on.

There is much more that is known about the case that makes the court verdict and written opinion questionable, although credit must be given the court for its frankness about what it was doing, even while it was doing it.

"We are aware that in relation to certain aspects of the case there are a number of uncertainties and qualifications," the judges wrote. "We are also aware that there is a danger that by selecting parts of the evidence which seem to fit together and ignoring parts which might not fit, it is possible to read into a mass of conflicting evidence a pattern or conclusion which is not really justified."

It is remarkable, given all that the judges concede is questionable or uncertain, that at the end of the day they could still declare to the world that "there is nothing in the evidence which leaves us with any reasonable doubt as to the guilt of [Megrahi]".

### **Alternate Suspects**

There is, moreover, an alternative scenario, laying the blame on Iran and Syria, which is much better documented and makes a lot more sense, logistically, politically, and technically.

Indeed, this was the Original Official Version, delivered with Olympian rectitude by the U.S. government – guaranteed, sworn to, scout's honor, case closed – until the Gulf War came along in 1990 and the support of Iran and Syria was needed.

Washington was anxious as well to achieve the release of American hostages held

in Lebanon by groups close to Iran. The scurrying sound of backtracking then became audible in the corridors of the White House.

Suddenly – or so it seemed – in October 1990, there was a New Official Version: It was Libya – the Arab state least supportive of the U.S. build-up to the Gulf War and the sanctions imposed against Iraq – that was behind the bombing after all, declared Washington. The two Libyans were formally indicted in the U.S. and Scotland on Nov. 14, 1991.

“This was a Libyan government operation from start to finish,” declared the State Department spokesman. [NYT, Nov. 15, 1991]

“The Syrians took a bum rap on this,” said President George H.W. Bush. [*Los Angeles Times*, Nov. 15, 1991]

Within the next 20 days, the remaining four American hostages were released along with the most prominent British hostage, Terry Waite.

### **The First Version**

The Original Official Version accused the PFLP-GC, a 1968 breakaway from a component of the Palestine Liberation Organization, of making the bomb and somehow placing it aboard the flight in Frankfurt. The PFLP-GC was led by Ahmed Jabril, one of the world’s leading terrorists, and was headquartered in, financed by, and closely supported by, Syria.

According to the Original Official Version, the bombing was done at the behest of Iran as revenge for the U.S. shooting down of an Iranian passenger plane over the Persian Gulf on July 3, 1988, which claimed 290 lives. The support for this scenario was, and remains, impressive, as the following sample indicates:

In April 1989, the FBI – in response to criticism that it was bungling the investigation – leaked to CBS the news that it had tentatively identified the person who unwittingly carried the bomb aboard. His name was Khalid Jaafar, a 21-year-old Lebanese-American. The report said the bomb had been planted in Jaafar’s suitcase by a member of the PFLP-GC, whose name was not revealed. [NYT, April 13, 1989]

In May 1989, the State Department stated that the CIA was “confident” of the Iran-Syria-PFLP-GC account of events. [*Washington Post*, May 11, 1989]

On Sept. 20, 1989, *The Times of London* reported that “security officials from Britain, the United States and West Germany are ‘totally satisfied’ that it was the PFLP-GC” behind the crime.

In December 1989, Scottish investigators announced that they had “hard evidence”

of the involvement of the PFLP-GC in the bombing. [NYT, Dec. 16, 1989]

A National Security Agency electronic intercept disclosed that Ali Akbar Mohtashemi, Iranian interior minister, had paid Palestinian terrorists \$10 million to gain revenge for the downed Iranian airplane. The intercept appears to have occurred in July 1988, shortly after the downing of the Iranian plane.

Israeli intelligence also intercepted a communication between Mohtashemi and the Iranian embassy in Beirut "indicating that Iran paid for the Lockerbie bombing." [The Times, Sept. 20, 1989]

### **Lingering Doubts**

Though the Libyan indictment was handed down in 1991, some official experts on the case continued to have their doubts. In February 1995, former Scottish Office minister, Alan Stewart, wrote to the British Foreign Secretary and the Lord Advocate, questioning the reliability of evidence which had led to the accusations against the two Libyans.

This move, wrote *The Guardian*, reflected the concern of the Scottish legal profession, reaching into the Crown Office (Scotland's equivalent of the Attorney General's Office), that the bombing may not have been the work of Libya, but of Syrians, Palestinians and Iranians. [The Guardian, Feb. 24, 1995]

Similar doubts have lingered even after the verdict. "The judges nearly agreed with the defense," according to a news analysis by Donald G. McNeil Jr. in *The New York Times*. "In their verdict, they tossed out much of the prosecution witnesses' evidence as false or questionable and said the prosecution had failed to prove crucial elements, including the route that the bomb suitcase took."

"It sure does look like they bent over backwards to find a way to convict, and you have to assume the political context of the case influenced them," said Michael P. Scharf, a professor at the New England School of Law. [NYT, Feb. 3, 2001]

Now, we have the Scots law professor who masterminded the Lockerbie trial in the Netherlands launching his own scathing attack on the judges for finding the defendant guilty on "very, very weak" evidence.

Professor Robert Black described the decision as "astonishing" and warned that the bomber stands a better-than-average chance of being acquitted on appeal. Professor Black, a former judge with 13 years' experience and Scotland's leading expert on criminal procedure and evidence, said that in his view the Crown case had failed to comply with strict Scottish legal rules – tougher than English law – that evidence be corroborated.

Black declared: "I am absolutely astounded, astonished. I was extremely reluctant to believe that any Scottish judge would convict anyone, even a Libyan, on the basis of such evidence." [Electronic Telegraph UK News, Feb. 4, 2001]

So, let's hope that Megrahi is really guilty. It would be a terrible shame if he spends the rest of his life in prison because back in 1990 Washington's geopolitical plans for the Middle East needed a convenient enemy, which just happened to be his country.

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