

## Megrahi debacle: The darker corners of the Scottish criminal justice system

By Andrew Allen

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The Megrahi case has been extraordinary from the start. Leaving to one side the heinous nature of the crime which led to Megrahi's conviction, the legal processes have all been rather unusual and of course conducted in the full glare of international publicity as any new appeal would have been were it not for the events of this month.

Two hundred and seventy people were killed on the night of December 21, 1988, when Pan Am Flight 103 was blown up over Lockerbie on the way from London's Heathrow Airport to New York's John F. Kennedy International Airport. On April 5, 1999, Al-Amin Khalifa Fhimah and Abdelbaset Ali Mohmmad al-Megrahi, both Libyans, were handed over by the Libyan government after lengthy negotiations which led to a trial under Scottish law but taking place in the Netherlands.

A Scottish High Court of Justice courtroom was purpose-built at the neutral venue of Camp Zeist, a former United States Air Force base in the Netherlands. The UK and the Netherlands agreed by means of a bilateral treaty that the premises were, for the duration of the trial and any subsequent appeal, under the authority and control of the Scottish Court. The judges sat without a jury in a panel comprising three senior judges and an additional (non-voting) judge in case of any need for substitution.

In January 2001 Fhimah was acquitted but Megrahi was convicted of involvement in the bombing and sentenced to life imprisonment. The minimum sentence before consideration of parole was set at 20 years from April 5, 1999.

The judgment is detailed and exhaustive in its treatment of the forensic material but unimpressive in its conclusions as to the link between Megrahi and the circumstantial evidence – in particular clothes found in the wreckage that Megrahi was said to have purchased in Malta.

Megrahi appealed and his appeal (which was not a re-hearing) was heard by a panel of five Scottish Judges, also in the Netherlands, sitting as the Court of Criminal Appeal who rejected the appeal in a decision handed down on March 14, 2002. Considerable disquiet was caused by the verdict and appeal decision. Criticism of the process came from the UN's special observer, professor Hans Köchler, and from some of the victims' family members. Alternate conspiracy

theories – some sounding wild, some less so – involving for example the Iranian government and the Syrian government have floated around for years. No one else was ever convicted and the question as to exactly what happened to Pan Am Flight 103 and which organization or state was behind the bombing remains unanswered.

After considering his case for four years, the Scottish Criminal Cases Review Commission referred Megrahi's conviction to the Court of Criminal Appeal for a fresh appeal. Megrahi eventually accepted that this could take place in Edinburgh rather than in the Netherlands. A number of concerns were being raised by his defense team including a suggestion that secret evidence had been available to the prosecution at the time of trial but not to the defense.

On August 18, 2009, Megrahi dropped his appeal, citing his ill health. On August 20, 2009, the Scottish government released Megrahi on compassionate grounds to return to Libya as he was suffering from terminal prostate cancer and had a life expectancy of less than three months. The decision fell to be made by the Scottish Justice Secretary and it is not a decision-making process in which the UK government in Westminster should have any part to play. Add to that principle the fact that there is no love lost between the Scottish Nationalist Party Government of Scotland and the Labor Party in power for the time being in London and the chance of collusion between the two seems very unlikely. It is more likely that any embarrassment caused to the London government will have been a bonus to the government in Edinburgh. If such embarrassment had been a motivating factor, which is unlikely, rather than merely a minor positive aspect of a difficult decision making process, it would not have been well thought out – some Americans have called for boycotts of shortbread, haggis and more importantly the Scottish tourist industry. No one has yet suggested boycotting television, the telephone and penicillin – all Scottish inventions.

The cries from the government of the United States, including the Secretary of State Hillary Clinton, against Megrahi's release were also rightly disregarded. Scottish law allows prisoner release on compassionate grounds alone. If this concept is alien to the laws of the United States, even if it is the nation of many of the victims, no state can permit a foreign state to hold influence in the decision-making process of the first state's senior legal officer.

The views of the victims' families are on the other hand a relevant consideration which will have been taken into account by the Scottish Justice Secretary. These views, so far as they have been made public, would appear to have been divided, as they have been since the Megrahi trial.

Even if the allegations that Megrahi was released as part of a trade deal negotiated with the UK central government are completely baseless, the Megrahi trial has not been good for the reputation of Scottish criminal legal system. The gossip from the stables of the Faculty of Advocates is that the embarrassment now suffered by the governments of Scotland and the UK, given Gadhafi's antics upon the return of Megrahi, is nothing compared to the embarrassment that would have been suffered by the Scottish criminal legal system hierarchy had the

Court of Criminal Appeal overturned the verdict, as was widely expected. The world of the Scottish legal profession is small and widely considered to be a rather stuffy one. Since the decline of the Scottish newspaper industry, the legal profession is unused to high-level national analysis much less international scrutiny. It may have escaped examination for the time being as the media focuses elsewhere.

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