

A SPECIAL REPORT FROM

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# LOCKERBIE THE FLIGHT FROM JUSTICE



by **PAUL FOOT**

## Dramatis Personae

**Aitken**, Ian: *Guardian* journalist, guest at Garrick lunch

**Al Megrahi**, Abdelbasset Ali Mohamed: Senior JSO officer, tried and found guilty of bombing

**Anderson**, Jack: *Washington Times* journalist

**Annan**, Kofi: secretary general of the United Nations

**Ashton**, John: researcher for Channel 4 Documentary

**Assad**: Syrian dictator

**Bedford**, John: Heathrow baggage handler

**Bell**, DCI: of Dumfries and Galloway police, he interviewed Gauci in 1989

**Black**, David: *Independent* journalist who broke the story of Libyan involvement

**Black**, Robert, Professor: head of the department of law, University of Edinburgh.

**Bollier**, Edwin: director of MEBO, Swiss manufacturer of timer devices

**Boyd**, Colin, QC: who replaced Lord Hardie as Lord Advocate at the Lockerbie trial

**Brisbane**, Jim: prosecution for the Crown

**Buckland**, Chris: *Today* journalist, guest at Garrick lunch

**Bush**, President George: the first

**Campbell**, Alistair QC: Advocate Depute for the prosecution

**Cannistraro**, Vince: former head of CIA's counter-terrorism section

**Channon**, Paul: Secretary of State for Transport in 1988

**Cook**, Robin: British Foreign Secretary

**Dalkamoni**, Hafez Kassem: member of PFLP-GC

**Dalyell**, Tam: Labour MP for Linlithgow

**Diab**, Ramzi: Palestinian terrorist

**Duff**, Alistair: criminal lawyer from Edinburgh representing Al Megrahi

**Elias**, Abu: Palestinian terrorist

**Fereday**, Allan: Britain's foremost forensics expert

**Fhimah**, Lamin: colleague of Giaka, eventually put on trial for the bombing

**Fieldhouse**, Dr David: Police surgeon

**Forsberg**, Ulf: Uppsala district prosecutor presiding over Abu Talb extradition hearing

**Gadaffi**, Colonel: Libyan leader

**Gannon**, Matthew: formerly deputy CIA station chief in Beirut

**Gauci**, Tony: unfortunate Maltese boutique owner

**Gerwel**, Jakes, Professor: Secretary to the South African Cabinet and former vice chancellor of the University of the Western Cape, one of two men chosen by Nelson Mandela to negotiate with Colonel Gadaffi

**Giaka**, Majid: Libyan who defected to US claiming to be a Senior Intelligence Officer

**Gilchrist**, DC: Dumfries and Galloway police officer

**Gill QC**, Mr: Counsel for the bereaved families

**Gobel**, Rainer: physicist for German police

**Goben**, Mobdi aka 'The Professor': Palestinian bomb-maker

**Hayes**, Thomas, Dr: forensics expert working for RARDE

**Hendershot**, Hal: FBI officer who interrogated Giaka

**Hussein**, Saddam: Iraqi leader

**Jibril**, Ahmed: leader of the Popular Front for the Liberation of Palestine – General Command (PFLP-GC)

**Johnston**, David: Scottish radio reporter questioned after suggesting the investigation was delayed for two days whilst CIA agents rifled through the luggage

**Johnston**, Sergeant David: Dumfries and Galloway Police

**Kamboj**, Sulkash: baggage handler who denied x-raying the luggage

**Keen**, Richard QC: representing Fhimah

**Khreesat**, Marwan: Jordanian bomb-maker

**Koca**: baggage handler who made crucial entry in worksheets but did not give evidence at the trial

**Koscha**, Joachim: baggage handler at Frankfurt airport

**Langdon**, Julia: *Daily Mirror* journalist, guest at Garrick lunch

**Leppard**, David: *Sunday Times* journalist and author of series of articles about Lockerbie in 1989

**Lloyd**, Tony: Minister of State at the Foreign Office

**Lord Coulsfield**: Judge at Lockerbie trial

**Lord Fraser of Carmyllie**: Lord Advocate in charge of fatal accident inquiry

**Lord Hardie**: the New Labour Scottish Lord Advocate who dropped out of the trial when he became a judge

**Lord Maclean**: judge at Lockerbie trial

**Lord Sutherland QC**: chair of Lockerbie trial judges

**Maier**, Kurt: the man who ran the x-ray machine at Frankfurt, he did not give evidence

**Mandela**, Nelson: he was instrumental in persuading Gadaffi to release the two men for trial

**Marshman**, Edward: FBI agent

**McColm**, DC: Dumfries and Galloway police officer

**McFadyen**, Norman: masterminded the prosecution for the Crown

**McKee**, Major Charles: CIA Agent instrumental in release of hostages in Beirut and victim of the bomb

**Meister**, Erwin: director of MEBO, Swiss manufacturer of timer devices

**Mesbahi**, Abolghasem: witness whose claims, disproving Libyan connection, were published in a German magazine in 1997

**Mifsud**, Major: chief meteorologist from Luqa airport

**Morris**, Harvey: *Independent* Middle East editor who broke the story of Libyan involvement

**Mowat**, John, Sheriff Principal: conducted the fatal accident inquiry

**Oakley**, Robin: *Times* journalist, guest at Garrick lunch

**Orkin**, John Scott: CIA electrical engineer

**Parkhouse**, Geoffrey: *Glasgow Herald* journalist, guest at Garrick lunch

**Parkinson**, Cecil: Paul Channon's successor as Secretary of State for Transport

**Prince Bandar bin Sultan**: Saudi Arabian prince, one of two men chosen by Nelson Mandela to negotiate with Colonel Gadaffi

**Rozenberg**, Joshua: BBC's crime correspondent

**Rufford**, Nick: *Sunday Times* journalist

**Salem**, Mohammed: Palestinian identified as 'someone who looked like the man' who could have bought the clothes in Malta

**Scicluna**, Inspector: of the Malta police, he interviewed Gauci in 1989

**Senussi**, Abdullah: head of the JSO's operations administration

**Smith**, Ron: employee of Galloway Mountain Rescue, related story of red tarpaulin and the box

**Talb**, Abu: Palestinian terrorist

**Taylor**, William QC: representing Megrahi

**Thatcher**, Margaret: British Prime Minister at time of Lockerbie

**Thurman**, Tom: forensic investigator for the FBI

**Turnbull**, Alan QC: prosecutor at Lockerbie trial

**Van Atta**, Dale: *Washington Times* journalist

**Williamson**, 'Willy' DCI: Scottish police Lockerbie squad

**Wilson**, Jim: Farmer who reported suitcase of drugs in his field

## Acronyms

<b>BKA:</b>	The German police
<b>CIA:</b>	Central Intelligence Agency
<b>FAI:</b>	Fatal Accident Inquiry
<b>FBI:</b>	Federal Bureau of Investigation
<b>JSO:</b>	Libyan Intelligence Organisation
<b>MEBO:</b>	Swiss manufacturer of timer
<b>PFLP-GC:</b>	Popular Front for the Liberation of Palestine – General Command
<b>RARDE:</b>	Royal Armaments Research and Development Establishment
<b>UNITA:</b>	National Union for the Total Independence of Angola

## Chapter One

# THE HUNT FOR THE FIRST SUSPECTS

**A**T just after seven in the evening, four days before Christmas 1988, what seemed at the time like a fireball smashed into the small Scottish border town of Lockerbie. A Pan Am jumbo jet airliner had exploded in mid-air, killing all its 259 passengers and crew. As the fireball ripped through the town, 11 more were added to the death toll. It was the biggest air disaster in British history, but it was no accident. After an anxious few days over Christmas, it was established that the airliner, Pan Am 103, had been blown up by a bomb. The Lockerbie bombing became the biggest mass murder in British history and led to an international hunt for the murderers – a hunt which was to last for more than twelve years and is still not over.



## CHANNON FODDER

**A**LMOST at once it was established that Pan Am 103 had been blown up by an explosive device, or bomb.

Then news broke which shocked and dismayed the relatives. There had, it emerged, been secret warnings that a terrorist attack was being planned on American airlines in Europe.

Transport secretary of state Paul Channon, who had not endeared himself to the relatives by flying off on a Christmas holiday to the Caribbean island of Mustique almost immediately after the disaster, revealed in the House of Commons on his return that there had been no less than 215 warnings against aviation in 1988.

The most remarkable was a call to the American embassy in Helsinki, the capital of Finland, on 5 December 1988, a fortnight before the disaster. The caller warned that a Finnish woman would carry a bomb onto a Pan Am airliner from Frankfurt bound for America.

Exasperated attempts by some of the relatives to get more information on this and the other warnings were singularly unsuccessful during those first three anxious months after the disaster. More news trickled out week by week.

First, it was discovered beyond all doubt that the plane had been blown up by an explosive device. Then it was revealed that the bomb had been disguised in a Toshiba cassette recorder and packed in a suitcase in the aircraft's hold. Then in March 1989, there came what seemed to be a breakthrough.

A row broke in the House of Commons over the head of the unfortunate transport secretary Channon.



Paul Channon

The immediate cause of the row was a press campaign started off apparently by a secret "lobby" lunch at which Channon had been the guest of a self-styled luncheon club of political journalists.

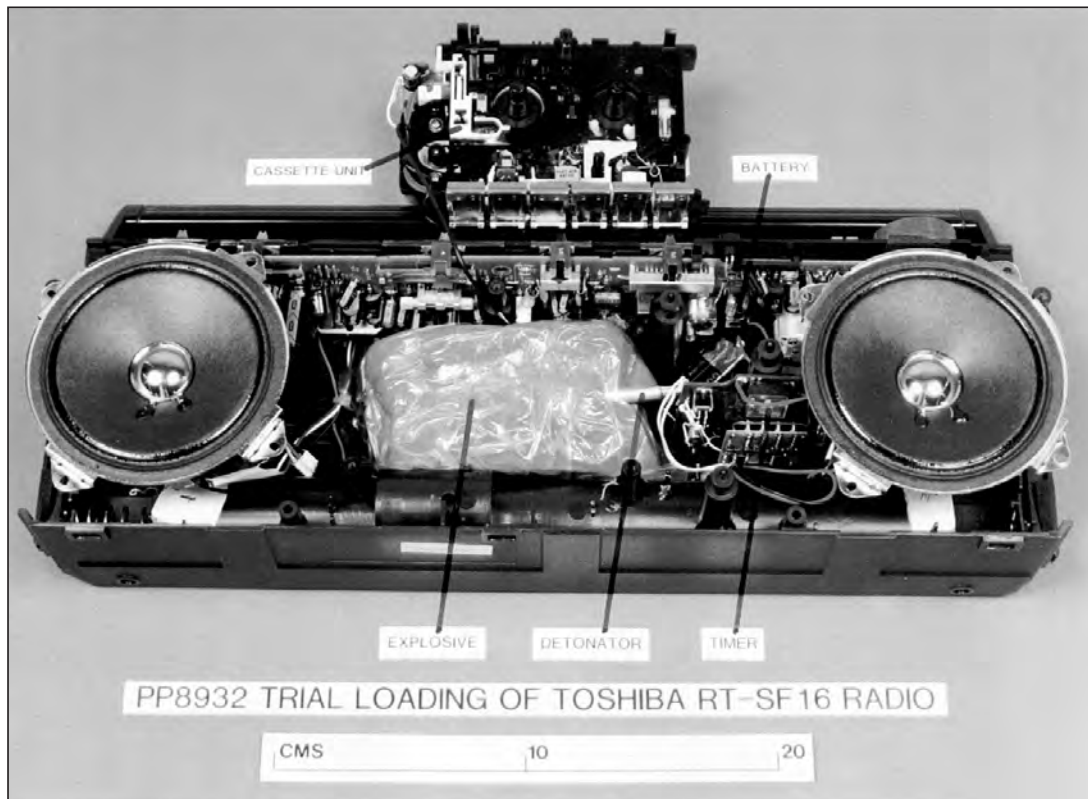
The venue for the lunch was a small dining room at the Garrick club. The five journalists were Ian Aitken of the *Guardian*, Chris Buckland of *Today*, Robin Oakley of *The Times*, Julia Langdon of the *Daily Mirror* and her husband Geoffrey Parkhouse, then of the *Glasgow Herald*.

The rules of the unofficial luncheon club, which had been set up by Parkhouse and Langdon, were strict; anything said by the guest at the lunch was "on lobby terms", and therefore could not be directly attributed. These rules comforted the guests into talking freely in the certain knowledge that they could not be quoted.

The Budget that March was on Tuesday 14 March, and the lunch was two days later, on the 16th. The conversation turned to the Lockerbie disaster, which was to be the subject of a special statement by the Scottish Lord Advocate the following day.

Exactly what Channon said at the lunch can never be established, but it led to some extravagant reporting, notably

A reproduction of the bomb in the Toshiba cassette



by Chris Buckland of *Today* on 17 March. His report indicated that Channon was plainly satisfied that thanks to the brilliant detective work by the Dumfries and Galloway police, the smallest police force in the country, the Lockerbie bombers would soon be brought to book.

This article was taken up and embellished still further in the Scottish *Daily Record*. The combined articles led to a storm in the House of Commons the next Tuesday, 21 March. The row was set off by the leader of the Labour Party Neil Kinnock, who put down a special private notice question to Paul Channon.

Channon gave a detailed reply, referring MPs to a statement on the criminal inquiry into Lockerbie given the previous week by the Lord Advocate. He went on: "Late in October 1988 the German police in Frankfurt discovered a radio cassette bomb which contained barometric and timing devices indicating that it was intended to sabotage an aircraft."

This information, he went on, was passed to the British Department of Transport which "issued a warning by telex on 22 November 1988 to UK airports and airlines pointing to the possible existence of other such devices". On 19 December, the department drafted a warning circular. It was "not sent out because of the need to obtain reproduction photographs in colour". Two days later, Pan Am 103 was bombed over Lockerbie.

On 16 February, Channon had more news for the House of Commons, to which he added a surprisingly firm

assurance: "The bomb that caused the disaster had been contained in a radio cassette player packed in the luggage – luggage which almost certainly did not originate from Heathrow." So the department sent out another circular warning of such devices and issued instructions on how to prepare for them.

Channon went on to deal at some length with the Helsinki warning and concluded, with the American ambassador to Finland, that the warning was a hoax. When asked about the lunch at the Garrick he refused to "comment on meetings with individuals" and insisted that he had said nothing about Lockerbie which had not already been said by the Lord Advocate and therefore had said nothing about arrests or impending arrests.

Channon's denials were not acceptable to the editor of the *Daily Mirror*, Richard Stott, who knew perfectly well that Channon had had lunch with his political correspondent, Julia Langdon, and what he had said there.

On Tuesday 22 March, the *Mirror* front page carried the bold announcement **YOU'RE A LIAR, MR CHANNON**. The paper claimed that Channon had indeed talked about impending arrests and to test the matter, challenged the Transport Secretary to issue a writ for libel against the *Mirror*. Channon refused to do so, and most commentators, including *Private Eye* (1 April, 1989), predicted that his days in the Cabinet were numbered. So they were.

## PARKINSON'S LAW

**A**FTER a decent interval, Channon was sacked and replaced as Transport Secretary by Cecil Parkinson, former chairman of the Tory party who had resigned as Margaret Thatcher's trade and industry secretary after being exposed by Sara Keays as the father of her child.

Always deeply devoted to Parkinson, Margaret Thatcher had brought him back into government in 1987, and now picked him to replace Channon as Transport Secretary.

At once, Parkinson was plunged into the Lockerbie controversy. In September, he attended a meeting with the bereaved families and immediately appeared to accede to their demand for a full-scale public inquiry into the Lockerbie disaster. They would have their inquiry, promised Parkinson, if he could clear it with his colleagues.

Everyone at the meeting assumed that in this context there was only one colleague who mattered: Prime Minister Thatcher herself. She at once rejected her favourite Minister's plea. There would, he disconsolately revealed to the families at another meeting, be no public inquiry.

Years later, in 1994, after a television programme about another disaster – the sinking of the cruise boat *Marchioness* in the summer of 1989 – Parkinson was asked to reflect on Lockerbie. After ascertaining that he was "off the record" and without knowing that he was being recorded, Parkinson said: "I was

discussing with the Lockerbie relatives whether we couldn't have some form of public inquiry which would have meant, because the security services were involved, inevitably a certain amount of suspicion – and I wondered whether I couldn't get a High Court judge to look into the security aspects privately and report to me.

"If I could get the relatives to agree with that, if I got that done, that would satisfy them. Because when you get into the Lockerbie business – how did we find out certain information, how did we know this, how did we know that? – you would have had to recall not only our own intelligence sources but information we were recovering from overseas. Therefore that had to be a closed area."

## THE ANDERSON PAPER

**OUT of the mouths of former Cabinet Ministers talking off the record, come forth gobbets of truth.**

The fascinating aspect of this revelation from Parkinson was his confirmation that the real problem with finding out the truth about Lockerbie was the damage that truth might do to the security services.

Yet, in spite of the fact that the relatives had apparently approved a course of action that would shunt all security matters off onto a dependable High Court judge, Thatcher had still – in December 1989 – rejected any question of a public inquiry.

A clue to Thatcher's attitude at the time came in an article in the *Washington Post* the following January (1990) by the celebrated American columnist Jack Anderson and Dale Van Atta.

The article started with the surprising revelation: "President Bush and British Prime Minister Margaret Thatcher secretly agreed last spring to play down the truth about who blew up Pan Am flight 103 over Lockerbie, Scotland.

"After both leaders had intelligence reports pointing the finger at a terrorist hired by Ayatollah Khomeini, Thatcher called Bush. In that conversation they agreed that neither could stand the political heat of making the evidence public because both were impotent to retaliate."

The article went on to reveal that in March 1989, just a few months after the bombing, intelligence in both the United States and Britain had discovered the culprits for the Lockerbie bombing. They were terrorists under the control of the Popular Front for the Liberation of Palestine – General Command (PFLP-GC) under the leadership of Ahmed Jibril.

Anderson and Van Atta asserted that in July 1988, soon after the shooting

down by a US warship of an Iranian airbus over the Persian Gulf, Jibril had gone to Iran and struck a deal with the authorities there to blow up an American plane in revenge.

The article continued: "When the intelligence reports began to leak last March, Thatcher called Bush to discuss their problem. Bush didn't argue when Thatcher suggested that they 'low-key' the findings. After the call, word was quickly passed to top officials conducting the Pan Am investigation that they were not to make any off-the-record remarks implicating Jibril or Iran in Britain."

Jack Anderson's contacts in high Washington politics were impeccable and it seems most unlikely that his report of the phone call was entirely wrong. What he may have missed was the relevance of the date of the call, which he gave as "mid-March" 1989 – precisely the time of the row in the press and the House of Commons about Mr Channon and the Garrick lunch.

If the top level call did take place at that time, it was most probably inspired by the headlines following the Channon lunch. No doubt poor Paul Channon was among the first to taste the fury of his Prime Minister about his indiscretions at the Garrick.

But there was something else about Anderson's speculation which didn't quite ring true: the notion that George Bush and Margaret Thatcher would agree a "low key" approach solely because they could not do anything to avenge themselves and the Lockerbie relatives on Iran.

Just as likely was the fear in both their minds that the Lockerbie bombing had exposed a gaping hole in their intelligence services which would, if the matter was fully aired, be proved to have been incompetent to stop a murderous plot they knew about. At any rate, the Anderson article provided some explanation for the curious official silence of both heads of state after March 1989.

## THE SUNDAY TIMES REVEALS THE TRUTH

**I**n any case, neither leader proved very successful in damping down the enthusiasm of the police forces and intelligence organisations who were hot on the trail of the Lockerbie bombers.

By the autumn of 1989, massive new doses of information about the disaster reached the public from the sources Thatcher and Parkinson had apparently been so anxious to protect.

On 29 October, 1989, the *Sunday Times* started a long series of articles on Lockerbie by their staff journalist David

Leppard. In the 1960s and 1970s the *Sunday Times* had established a reputation for independent investigation and assessment of public affairs. The paper's *Insight* column had investigated big public scandals including major political events such as the Bloody Sunday massacre in Derry in 1972.

The tradition of the *Insight* column was that its journalists chose their own subjects for inquiry, independently even of the editor, and proceeded on their own initiative to carry out their own investigations and produce their reports.

This tradition was continued under successive *Insight* editors. In 1981, Christopher Hird, who had worked as deputy editor at the *New Statesman* to the former *Insight* editor Bruce Page, was appointed editor of *Insight*, and continued in the tradition of independent investigation and reporting.

In 1983, the new owner of the *Sunday Times*, Rupert Murdoch, appointed a relatively unknown journalist, Andrew Neil, as *Sunday Times* editor. Neil's first act was to sack Christopher Hird and to make it clear that he disapproved of the *Insight* column and its traditions. In future, he decreed, all investigations would be controlled and supervised by himself.

The *Insight* logo, though it reappeared from time to time, was effectively junked. One casualty was the tradition of independent journalistic investigation. This was replaced in the main by material which posed as "investigative" but which in fact recycled information from safe sources, safest of which were the police and the security and intelligence services.

David Leppard borrowed heavily from both for his Lockerbie series. The first of these articles, published on page 1 on 29 October, 1989, was headed **LOCKERBIE: DISASTER TRAIL LEADS TO MALTA.**

The first word betrayed the source of this astonishing revelation. "Police investigating the Lockerbie air disaster have uncovered evidence which suggests that the bomb which destroyed the American jumbo jet was originally loaded on to a plane at Malta.

"The evidence is a computer loading list of all luggage put on board the first leg of the doomed Pan Am flight 103 from Frankfurt to London on 21 December last year. The list shows that one suitcase was transferred on to a Frankfurt flight from Malta without an accompanying passenger. This crucial evidence, given to Scottish detectives in August, had been available to German police since February." The article then published the following crucial information.

*"The suitcase which carried the bomb was a Samsonite hardshell.*



*A Samsonite suitcase packed with a cassette recorder and clothes like the bomb suitcase on Pan Am 103*



*The case was packed with clothes bought from a shop in Malta.*

*The shopkeeper who sold the clothes was interviewed by a squad of Scottish police.*

*The shopkeeper told them that he had sold the clothes 'to a man he believed was a Libyan' a month before the bombing."*

All these facts stood the test of time. The official British investigators duly concluded, wrote Leppard, that "the bomb was smuggled from West Germany into Malta" and back again to Frankfurt airport, and on to Lockerbie.

Who carried out this complicated plot? David Leppard's "security sources" knew the answer to that as well. "Iran paid the Popular Front for the Liberation of Palestine – General Command, a hard-line Palestinian terrorist group, up to 10 million dollars in advance to carry out a revenge attack for the shooting down of an Iranian airbus by an American warship in the Gulf in July 1988."

By the following week, David Leppard's investigations into Lockerbie had been awarded the treasured (and meaningless) *Insight* logo. "*Insight's* account," he boasted, "is based on information pieced together by Western intelligence sources."

It named the principal Lockerbie bombers, identified who paid them and exposed how they planted the bomb on board Flight PA 103. "Western intelligence," he went on, "is convinced that Iran paid millions of dollars to Ahmed Jibril to carry out the bombing as revenge for the shooting down of an Iranian airbus by an American warship over the Gulf in July last year."

As promised, the article named the chief conspirators: Hafez Kassem Dalkamoni who recruited "a Jordanian terrorist" called Marwan Khreesat, to make the bombs. Dalkamoni was arrested by German police. So was Khreesat, who was released "for lack of evidence" even though "a barometric (altitude sensitive) bomb of the type eventually used

at Lockerbie was found in his car when he was arrested".

The bomb made by Khreesat was "concealed in a Toshiba radio cassette". It was smuggled to Malta by a known PFLP-GC terrorist called Ramzi Diab, and handed over to a Palestinian cell there. Dalkamoni and "another Palestinian terrorist" called Abu Talb then went to Malta and "instructed the cell to plant the bomb on an Air Malta flight bound for Frankfurt".

This second article ended with some criticism of the German police for the bungling of the investigation, and especially for the release of the bomb-maker Khreesat. In a huge, rather repetitive, article Khreesat was said to be suspected of being "a triple agent" who intended to bomb Flight PA 103. The chief suspects, therefore, were Dalkamoni, Khreesat, Talb and a Libyan explosives expert known as The Professor.

The third article, published on 12 November, reported that Scottish police were about to fly to Sweden to visit their suspect, Abu Talb, who was in prison there on terrorist offences. The detail of the story was shifting all the time, probably because of new information available to Leppard's security sources.

For instance, the original story said the bomb suitcase went on at Malta unaccompanied. Two weeks later it was "carried aboard a plane to Frankfurt by an innocent passenger duped by the terrorist gang". But the essence of the information did not change at all.

The fourth article, on 19 November, once again concentrated on Talb. "Talb flew out of Malta on 26 November last year" wrote Leppard, "only three days after a man walked into a boutique in the tourist resort of Sliema and bought clothes which were later wrapped around the Pan Am suitcase bomb."

This article dealt with another mystery. "The bombs discovered in the Frankfurt flat were connected to altitude-sensitive devices designed to set off a 45-minute timer at 3000 feet. This has led to speculation that the Lockerbie bomb could not have been loaded anywhere but London because of the interval between the jet leaving Heathrow and it exploding over Lockerbie."

But this speculation was not at all in agreement with what was exercising the minds of the *Sunday Times* sources – the Scottish police. "Scottish police however," reported Leppard, "believe a PFLP-GC member smuggled the bomb last November from West Germany to Malta."

The fifth article (on 5 December 1989) was finally certain about one of the main suspects. **LOCKERBIE TRIAL FOR 'BOMB MAN'** was the headline over a Leppard article from Uppsala, Sweden, which stated boldly that Abu Talb was about to be extradited from Sweden to Britain to stand charges over the Lockerbie bombing: "The *Sunday Times* which first named Talb as a suspect last month, can reveal that he has been positively identified as the person who bought the clothes from a shop in Malta which have been linked by British forensic scientists to the suitcase bomb."

Leppard, who was presumably present outside the court, then reported: "During a 90-minute closed court session Ulf Forsberg the Uppsala district prosecutor told the presiding magistrate that the owner of a boutique in Sliema, Malta, had identified Talb as the man to whom he sold the clothes."

On 10 December, for his sixth article on the subject, David Leppard disclosed that "two detectives from Lockerbie flew to Belgrade last week to question friends and relatives of Mobdi Goben, a 42-year-old Palestinian nicknamed 'the Professor' because of his alleged bomb-making expertise." (This was the man identified by Leppard only two weeks previously as a Libyan).

But the main point stayed firm. "Goben is believed to have supplied the material for the Lockerbie bomb to Hafez Dalkamoni, who leads the PFLP-GC's European network."

The seventh article was entitled **POLICE CLOSE IN ON LOCKERBIE KILLERS** and started with the bald statement that police now had the necessary evidence to charge the Lockerbie bombers.

This was backed up by another massive full-page article, this time by David Leppard and Nick Rufford, modestly entitled **LOCKERBIE: THE FINAL RECKONING**. Perhaps it was the addition of Rufford to the team that uncovered a new and apparently vital piece of evidence.

“From the moment a policeman picked up a little piece of printed circuit board which had fallen onto the floor from a shattered luggage pallet, investigators were on their way to solving the mystery of who had carried out the biggest mass murder on British territory.”

Thanks to what the article described as “the brilliance of Allen Fereday, Britain’s foremost forensics expert” the fragment was traced to a Toshiba radio cassette recorder which had contained the explosive device. The Toshiba was in turn traced to a Samsonite suitcase placed by “probably the most brilliant piece of detective work in the inquiry” in the second layer of a luggage pallet on Pan Am 103.

From there the interminable story repeated itself: the clothes in the bomb suitcase had come from Malta, and from Malta, according to documents from Frankfurt, an unaccompanied bag had flown to Frankfurt.

In the eighth and last of the articles, published on Christmas Eve 1989, almost exactly a year after the bombing, David Leppard revealed another piece of evidence to prove his theory. “Ministry of Defence officials now believe a white plastic residue recovered from the crash site is the same material as that in alarm clocks bought by the group at the shop in Neuss, near Dusseldorf, two months before the bombing.”

In such continuous regurgitation of a repeated story it is perhaps not surprising that there were a number of contradictions or that David Leppard and/or Nick Rufford occasionally contradicted themselves in the detail. But throughout the whole the basic theme was clear and consistent. The bomb was in a Toshiba cassette recorder, packed in a Samsonite case.

In the weeks before the bombing, a Palestinian terrorist gang acting under the orders of the PFLP-GC were engaged in making bombs and fitting them to Toshiba recorders with the intention of planting them on an American aircraft. Indeed, the German police, in an operation they called “Autumn Leaves”, had actually arrested members of the PFLP-GC gang. It was only a matter of time before attempts were made by the

brilliant Scottish police backed up by their brilliant forensic scientists at RARDE (Royal Armaments Research and Development Establishment), to extradite those responsible so they could stand trial for the murder of 270 people at Lockerbie.

It is worth pointing out that at that stage, at least according to the *Sunday Times*, there was not a jot of evidence to incriminate anyone outside the PFLP-GC or their paymasters in Iran. There was, in addition, an obvious motive for the Lockerbie bombing – revenge for the Iranian airbus so recklessly shot down by an American warship in the Gulf a few months earlier.

Moreover the Iran/PFLP theory corresponded closely to what Paul Channon had told the journalists over lunch at the Garrick, and to what Anderson had ascribed to Bush and Thatcher in their conversation at about the same time. By the end of 1989, a full year after the bombing, every other media, police or intelligence investigation of the issue on both sides of the Atlantic arrived at the same conclusion.

There was, finally, in all the thousands devoted to the subject by the *Sunday Times*, or by anyone else, not a word about Libya – save only for the description of the man to whom the Maltese boutique owner, Tony Gauci, sold clothes as “a Libyan” and the reference to “the Professor” Goben as a Libyan, when in fact he was nothing of the kind.

The forensic evidence, including the fragment of circuit board allegedly picked up off the floor of a pallet, incriminated the PFLP. Police, intelligence, top politicians and every journalist who investigated the story came to the same conclusion. There was one set of suspects, the PFLP-GC, and only two countries were implicated, Iran and Syria.

For the first half of 1990 very little was said in public about Lockerbie. The families kept campaigning for a public inquiry, but all they got was a fatal accident inquiry held in Scotland that started in October 1990. The inquiry was heavily controlled by the Scottish Lord Advocate and was not permitted to

inquire into likely suspects – that was left entirely to the CIA, the FBI and the Dumfries and Galloway police.

One final fling at the PFLP-GC and their connections before the bombing with Malta was made on Granada Television in November in the run-up to the second anniversary of the disaster.

The programme focused on a bakery in Malta and a Palestinian cell based there. The programme made the same connection as the *Sunday Times* had done a year earlier – between the fact that the clothes in the bomb suitcase were bought in Malta and the less certain fact that an unaccompanied bag from Malta was loaded onto a Pan Am feeder flight from Frankfurt to London and thence to Pan Am 103. To illustrate this hypothesis, the programme showed a sinister-looking Arab checking in a bag at Malta airport and then sliding surreptitiously away while the plane took off.

This was too much for Air Malta, who sued Granada for libel. Norton Rose, the London commercial solicitors, compiled a huge dossier detailing almost everything about the flight from Malta to Frankfurt on the day of the Lockerbie bombing and proving that all 55 bags checked in on the flight could be ascribed to passengers, none of whom travelled on to London. The evidence was so powerful that Granada settled the action before it got to court. They paid Air Malta £15,000 damages and all the costs of the case.

The only time these matters had been tested in a legal action, the Maltese connection to the bomb suitcase was comprehensively demolished.

*Continued page 10*



*The Rev. John Mosey, whose daughter Helga died at Lockerbie*

## Appendix 1

# THE UNEXPLAINED MYSTERIES AT THE DISASTER SITE



## THE SMEARING OF DR FIELDHOUSE

**A**N early visitor to Lockerbie on the night of the bombing was a police surgeon from Bradford called David Fieldhouse. His ordeal was first reported in the *Eye* on the third anniversary of the bombing, 21 December 1991.

He was watching television at his home in Bradford when news of the disaster flashed up on the screen. He left the house at once and drove to Lockerbie. There he contacted the

police, explained who he was and offered to help.

A police officer was assigned to him and he spent the whole of that night and all the following day searching out bodies, labelling them and pronouncing them dead. For all that time he worked relentlessly, with nothing to eat except a biscuit. At darkness on the 22nd, he had found and labelled 59 bodies. After spending that night with a friend in Carlisle, Dr Fieldhouse went back again to Lockerbie on the 23rd to keep an early appointment with a detective chief inspector of Dumfries and Galloway police.

The inspector never arrived for the appointment, but, much to his irritation, Dr Fieldhouse was told by another policeman that his 59 tags had been replaced by 58 official ones. He went home, wrote a full report of his activities and posted it to the Dumfries and Galloway police headquarters. He never understood what happened to the 59th body, and was not especially surprised when the official police count of the bodies which he had certified only came to 58.

In ordinary circumstances, he might have expected a word of thanks or appreciation from the authorities, but instead, without warning and in his absence, he was subjected to a sinister smear – from the police force he had so selflessly assisted.

At the fatal accident inquiry into the Lockerbie bombing, the Scottish equivalent of an inquest, in October 1990, Sergeant David Johnston was asked by the Lord Advocate, Lord Fraser of Carmyllie, about one of the bodies found and labelled by Dr Fieldhouse. It was clear from the line of questioning that for reasons not entirely clear the Lord Advocate, the senior Scottish law officer, was rather cross about the doctor's performance.

**Q.** Would this be another example of Dr or Mr Fieldhouse carrying out a search on his own?

**A.** It would, my Lord.

**Q.** And marking the body of the person who is dead without notifying the police?

**A.** That is correct.

Sgt Johnson was also questioned by Mr Gill QC, counsel for the bereaved families:

**Q.** Can you tell me when it was that Dr Fieldhouse provided the information [about the bodies he'd found] to the Lockerbie inquiry office?

**A.** It would be some months later before we were able to ascertain the complete information we had to hand.

**Q.** It is clear, Sergeant, that it is scarcely a very satisfactory state of affairs?

**A.** It was not very satisfactory, sir.

THE *Eye* reported (*no. 783, 20 December, 1991*): "The picture was complete. The grieving families were presented with the notion of a slightly deranged surgeon driving up in the middle of the night to certify bodies without liaising with the police or anyone else and then taking several months to report what he had found."

This complete picture, however, was entirely false. When Dr Fieldhouse heard of the sergeant's evidence, he insisted on giving evidence to the fatal accident inquiry. In a long session under oath the doctor insisted that on the night of the disaster a policeman had been with him all night, and the following morning the officer was replaced by three others from Cumbria police, whom he named.

At least two of those officers, he said, were with him all day during which he certified some 47 bodies over an area of about 20 square miles. After exposing the police smears, Dr Fieldhouse got an apology, not from the police but from John Mowat, the Sheriff Principal who conducted the fatal accident inquiry.

The apology was at least partially reinforced by a letter to Tam Dalyell MP from the Minister of State at the Foreign Office, Tony Lloyd, on 17 February 1998. Mr Lloyd accepted rather shamefacedly that Dr Fieldhouse had indeed passed on the information about the bodies he'd certified on the evening of 22 December but that this "very unfortunately" had been overlooked.

Moreover, Mr Lloyd agreed that Dr Fieldhouse had written to the police a few days after he got back from Lockerbie. Mr Lloyd said he could "well understand" the distress caused by these "discrepancies" but could offer no explanation why a conscientious police surgeon should have been smeared by police and lawyers at a fatal accident inquiry set up by the government.

These official apologies and understandings were not much consolation to Dr Fieldhouse. On 21 December 1993, the fifth anniversary of the bombing, he had been summoned to a meeting of senior police officers in Wakefield, and sacked. No credible explanation was given to him or to anyone else for this sacking.

It came a few days after he was interviewed by researcher John Ashton for a two-hour Channel 4 documentary on the Lockerbie bombing. Dr Fieldhouse told the *Eye* (*no. 849, 1 July, 1994*): "I've racked my brains and neither I nor any of my colleagues can think of any relevant reason for my sacking. I believe my contract was not renewed because I stood up for myself at the fatal accident inquiry and was not prepared to condone perverting the course of justice."

Dr Fieldhouse's experiences in the grim aftermath of the bombing were not unique.



## THE WHITE HELICOPTER AND THE RED TARPAULIN

**MR Ron Smith was working for a team employed by Galloway Mountain Rescue searching among the debris left by the exploded plane.**

Three days after the bombing, he told the *Eye* (no. 868, 24 March 1995): "We were told that a search team had come across a huge red or orange tarpaulin in an open field. It covered a large box or container – far larger than a recording box or anything like that.

"Above the tarpaulin hovered a helicopter. A man with a gun stood in the door waving away anyone who approached the tarpaulin. Naturally no one went near it. When the searchers went back to the scene the next day, they reported nothing but a large hole. The tarpaulin and the container had vanished.

"It certainly could not have been removed except by a large vehicle, yet there were no track marks in the field. They concluded that the container must have been lifted away in the air."

Mr Smith talked to *Private Eye* quite openly and had no objection to the use of his name. What he said was one of the matters referred to in Mr Tony Lloyd's letter to Tam Dalyell MP mentioned above.

"As you know," wrote Mr Lloyd, "a story appeared in *Private Eye* suggesting that armed men in an unmarked white helicopter warned off Mr Ron Smith of Scottish Woodlands from approaching something which was covered by a red tarpaulin.

"Mr Ron Smith told Dumfries and Galloway police on 26 March 1995 (the day after the article appeared) that no such thing had happened to him. He had simply heard this story secondhand from another unidentified person. There is no evidence of any incident which might have given rise to this rumour. Mr Smith told *Private Eye* that the story they reported was untrue."

Mr Tony Lloyd cannot be counted among the many MPs who read *Private Eye*, and obviously had not read the story he sought to discredit. If he had, he might have noticed this sentence: "Ron Smith tells the *Eye* that he was *not* involved in this incident but he is sure it happened."

He never contacted the *Eye* to denounce the story that he so freely volunteered. Moreover, most surprisingly, he never mentioned the colour of the helicopter or the markings on it. These were not mentioned anywhere else in the *Eye* article though Mr Lloyd attributed to the *Eye* the information that the helicopter was "white" and "unmarked".

"At one stage," Lloyd explained helpfully, "the air accident investigation branch and the police used a white helicopter hired from a private company. This bore no markings other than the small registration markings on the tail boom. In some instances, this helicopter was flown with the rear door removed to allow better visibility and observations were conducted in this manner with binoculars and cameras."

## THE SUITCASE FULL OF DRUGS

**ANOTHER weird story from the hours after the disaster came from Mr Jim Wilson, a farmer at Tundergarth Mains.**

After the crash, his fields were littered with bodies and debris from the airliner. The mess included a suitcase, neatly packed with a powdery substance that looked like drugs.

He was worried in case the substances could harm his sheep and he contacted the police. Eventually, after some delay, the suitcase was removed. Farmer Wilson was one of the first witnesses to give evidence when the fatal accident inquiry started in October 1990. He answered questions, but was very surprised when no one asked him about the drugs suitcase.

Twice the Lord Advocate's office promised relatives that the matter would be "taken care of" but it never was. Some relatives discovered that the name printed on the suitcase, which Jim Wilson remembered exactly, did not appear on the list of passengers for Pan Am flight 103.

Others couldn't help remembering Dr Fieldhouse's testimony that he had labelled 59 bodies, while the police had labelled 58. Was Tony Lloyd from the Foreign Office referring to this suitcase when he wrote to Tam Dalyell: "as for the allegation that United States officials removed a case from the wreckage, this did not happen"?

Mr Lloyd followed the assurance with another of the same kind. "There is no question," he wrote, "of any items being released in the early stages of the investigation before their evidential value could be established."

In the recent murder trial of two Libyans for the Lockerbie bombing, reference was made to the fact that a suitcase belonging to Major Charles McKee, a senior CIA agent who

had been involved in the negotiations for the release of hostages in Beirut, had been mysteriously carried away from the piles of wreckage left by the crash and even had a large hole cut into it before it was returned to the investigators. The specific intention of cutting the hole, it was agreed, was to inspect the contents of the suitcase long before its evidential value could be established.

The fact that Major McKee and his CIA associate Matthew Gannon, formerly deputy CIA station chief in Beirut, were among the dead passengers may have explained at least some of the mysterious happenings in and around Lockerbie after the disaster.

Some of these matters were addressed in a book written almost immediately afterwards by Scottish radio reporter David Johnston. He suggested on radio at the time that the investigation had been held up for at least two days while the CIA hunted for and inspected the luggage of their dead officers.

Support for this theory came from another strange discrepancy. Martin and Rita Cadman, whose son Bill, a sound designer and director, had been one of the victims on the plane, were infuriated early on when they noticed that their son's death certificate was dated 24 December, when he had obviously died on the 21st. In all the time since they have never had any credible explanation for this discrepancy.

Almost as soon as his broadcast went on air, Mr Johnston was astonished to be approached by two very senior police officers who demanded to know the source for his story. When he refused, he was begged to betray his source to anyone he liked, even the prime minister, Margaret Thatcher. He declined, and heard no more.

But as these stories started to circulate among those of the bereaved relatives who were already inclined to doubt the official stories, the suspicion started to grow that there was more to this disaster than tragedy or terrorism, and that some other force outside the normal processes of democratic government was at work. Everything that happened in the next twelve years sustained and nurtured that suspicion.

## Chapter Two

# THE HUNT FOR NEW SUSPECTS

## THE GULF WAR AND THE PROBLEM OF SYRIA

**I**N all the months of 1990, before the fatal accident inquiry and the Granada programme, there had been a strange silence about Lockerbie from government and from media.

Throughout that year, there was a dramatic shift in the political situation in the Middle East. The long, ghastly and pointless war between Iran and Iraq ended after 10 years and a million corpses in the summer of 1988.

Throughout the war, the US government under Ronald Reagan pretended to be neutral but increasingly sided with Iraq. When the war ended, there was a stampede by the western arms industry to sell their arms to the Ba'ath government in Iraq led by the dictator Saddam Hussein.

No sooner had many of the wartime arms controls been dropped, and arms sales to Iraq redoubled, than Saddam Hussein, encouraged by his favourable status in the West and the new supply of western arms, sought to embark on new imperialist ventures in the Arab world.

As Saddam's plans to invade neighbouring Kuwait became clear to western intelligence, the leaders of the western powers took fright. Kuwait supplied eight per cent of the cheap oil on which the US economy depended, and the prospect of all that oil passing into the hands of a strong and ambitious dictator, as opposed to the weak and pliant dictatorship in Kuwait, was horrifying. As Saddam's plans became clearer and clearer in the spring and summer of 1990, so the western powers prepared for war against him.

At the same time, and as a direct result of this shifting scene, a new official approach to the Lockerbie bombing emerged. As we have seen, all through 1989 and for the first few months of 1990, the received view in government intelligence and the western media was that the bombing had been planned and perpetrated by people in Iran and Syria.

These were, for the purposes of western government and their intelligence services, perfectly acceptable

culprits. Iran had been suspect ever since the 1979 revolution there and the taking of American hostages. Syria had been beyond the pale as a state that harboured terrorists, and had been blamed for overtly terrorist attacks against American property. But now, thanks to the Iraqi invasion of Kuwait, an entirely new approach was called for.

If the US was to go to war in the Gulf, Iran would have – at the least – to be neutralised. More importantly, Arab support had to be found to bolster the US/UN forces preparing to invade Kuwait. Egypt was at once on side but Egypt was almost too reliable. The US required other less subservient allies to boost its invasion army, and Syria was the obvious choice.

If Syria could be brought on side over Iraq, the Arab forces on the other side – mainly Jordan and the Palestinians – would dwindle almost to nothing. For his own reasons the Syrian dictator Assad was worried about the expansionist plans of his tyrannical neighbour Saddam Hussein. Assad was not averse to joining the UN force to push Saddam out of Kuwait. Thus, very quickly in the summer and autumn of 1990, a sea change took place in the Gulf. The US, UK and their allies started to negotiate with their former enemies.

All this was completed quickly – in November 1990, new deals were signed to neutralise Iran and bring Syrian forces into the combined operation against Saddam already known as Desert Storm.

Obviously the deal meant disposing of the old suspicions of both Iran and Syria as harbourers of terrorists. This in turn meant dropping suspicions against both countries over the Lockerbie bombing. This was done very simply by stopping all official references to the "Autumn Leaves" investigation, to the German police inquiries, to the PFLP-GC or to their Syrian controllers.

President Bush took the lead in this matter by declaring, almost out of the blue, that "Syria took a bum rap on this". The evidence against the PFLP which had been so carefully put together and was so immensely impressive was quietly but firmly junked.

Obviously an alternative story was needed to replace it. Slowly at first but with gathering speed the evidence so painstakingly put together to prove the

complicity of Iran and Syria in the Lockerbie bombing was replaced with a completely different story with completely different suspects.

*The first signs of change came as the opposing armies started to build up in the desert.*

In October 1990, a series of newspaper reports indicated that the guilty country responsible for Lockerbie was not Iran or Syria or even Palestine. The guilty country was Libya.

These new suspicions were not reflected in either of the two official inquiries into the Lockerbie disaster. In October 1990, the fatal accident inquiry started under the aegis of the Sheriff Principal in Scotland.

Out of deference to the continuing inquiries of the Dumfries and Galloway police, the FAI did not even ask who was responsible for the bombing. But in so far as it dealt with matters of aviation security, all its questions and conclusions stuck closely to the received version about the PFLP and their gang in Germany.

A similar approach was adopted by the American Presidential Commission on Aviation Security and Terrorism. The Commission was made up of seven members, including two senators and two members of Congress. It invited questions from the bereaved families.

Sixty-six questions were submitted, some of which referred to the PFLP-GC. For instance, question 45 asked: "Is it true that the US government approached the Syrian government at Damascus with a request to close PFLP-GC training camps there because the US government had proof that this group was responsible for the bombing of Flight 103?"

These questions were not answered directly, but dealt with in varying degrees of thoroughness in the body of the report. The Commission conducted its extensive inquiries in several countries between October 1989 and February 1990. Most of its inquiries and recommendations dealt with security at airports. The Commission did not provide any theory as to who bombed Flight 103, but it did produce considerable material about the Autumn Leaves investigation, about the PFLP-GC, and about security at Frankfurt airport and at Heathrow.

There was hardly a mention of Libya in the report. Its members plainly did not even contemplate the possibility that Libya might have been linked to the bombing. Thus, by the spring of 1990, as the war drums began to beat in the Gulf, the two main official inquiries into Lockerbie on both sides of the Atlantic – the fatal accident inquiry in Scotland and the Presidential Commission in the United States – in so far as they referred at all to the culprits for the bombing had concentrated exclusively on the theory that the bombers were Palestinian terrorists paid for by Iran.

## TOM THURMAN FINDS A CLUE

**T**HE first sign of a shift in the official view of the bombing starts with a phone call in July 1990 from Tom Thurman, forensic investigator for the FBI, to DCI “Willy” Williamson of the Scottish police Lockerbie squad.

He asked the policeman to travel to Washington to have a look at what Thurman regarded as important new evidence. Williamson duly flew to Washington with two other Scottish policemen and the forensic expert from RARDE, Allen Fereday.

These men met Thurman at FBI headquarters. Thurman showed them a timer for an explosive device known as MST-13 which he suggested resembled a tiny fragment of material discovered after the bombing by the Scottish police.

This fragment had a strange history. It was first found in the neck of a shirt collected from the luggage off the stricken plane. The material found in the shirt was first marked “cloth, charred”, but this had been overwritten by a Scottish policeman with the word “debris”. The policeman who found it, DC Gilchrist, was never able to give a credible explanation for this alteration.

The fragment lay in a store with quantities of other material at least until May 1989 when it was examined by Dr Thomas Hayes at RARDE. Dr Hayes saw nothing specially relevant in the fragment, and apparently did nothing about it. His own note about his examination originally appeared on page 51 of his notes. The following pages were originally numbered 51-55, but the numbers were overwritten later to 52-56. Dr Hayes was never able to explain this re-numbering.

Four months later, in September 1989, Allen Fereday of RARDE wrote a note to DCI Williamson in Scotland asking him to look at a Polaroid picture of the fragment. Usually, RARDE experts would have had a proper photograph taken, but the Polaroid, wrote Mr Fereday, was “the best I can do in a short time”.

Neither Mr Fereday, Dr Hayes nor

anyone else was able to explain why a fragment first investigated by Hayes in May 1989 was not photographed nor why, when it was first sent to the Scottish police four months later, Fereday felt it necessary to apologise for the “short time” he had had to take a photograph.

In due course, after several fruitless journeys to circuit board manufacturers in Europe, Williamson sent the fragment on to the United States. So it was that in June 1990, a couple of weeks before Saddam Hussein invaded Kuwait, Williamson found himself and his colleagues in Washington comparing the fragment to that of an MST-13 timer showed to them by the Americans.

Tom Thurman pointed out that there were certain similarities between the tracking marks on the fragment originally found in the shirt and marks on the timer. Moreover, as he triumphantly revealed, there were some printed letters on the timer. The letters, they all concluded, were MEBQ, which they later translated as MEBO, the name of a firm in Switzerland.

This new information led the police on further trips to have a look at similar timers originally recovered or photographed in Senegal. Eventually, on 15 November 1990, as war in the Gulf seemed more and more certain, the police, shadowed as always by agents from the FBI or CIA or both, went to Switzerland where they interviewed Edwin Bollier and Meister, directors of MEBO, the firm that made the timers.

Bollier and Meister turned out to be difficult interviewees and their answers, like their evidence in the trial 10 years later, were often contradictory. But they did confirm that they had delivered

MST-13 timers to Libya. By the time the US air forces started bombing Iraq and the Gulf War started in January 1991, the first piece of evidence apparently linking the Lockerbie bombing to Libya was tentatively in place.

## THE LINK TO LIBYA

**T**HESE “discoveries” about the fragment and the timer led to reports in the media linking the bombing – for the first time in nearly two years of official investigations – to Libya.

In September 1990, only a few weeks after the visit of Scottish police to Washington and their meeting with Tom Thurman and only a month after the invasion of Kuwait, the French news magazine *L'Express* reported that the detonator fragment found at Lockerbie was identical to a number of others seized almost three years before by Senegalese police from two Libyan secret agents.

Before long this was being published in other Western media. On 14 December, 1990, for instance, the *Independent* in London, which had been among the most faithful followers of the PFLP-GC scenario, reported: “Libya was behind the bombing of Pan Am 103 two years ago, according to sources close to the inquiry. The proof, described as ‘conclusive’ by high-level sources, is based on analysis of a detonator fragment recovered from the Lockerbie debris. The evidence has come to light only in the last three months.”

The article went on: “One source said: ‘Not only do we now know Gaddafi was responsible, he also knows we know’.” The identity of this “source” was not

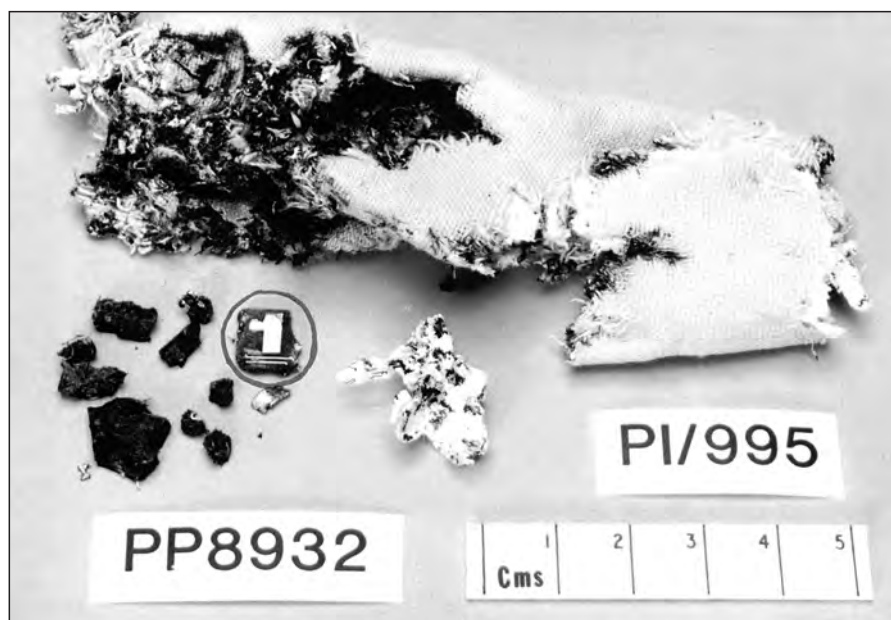


Photo of the charred shirt from the Lockerbie debris, and the tiny fragment of circuit board (circled)

revealed in the article but it cannot have been the official spokesman of the Scottish police who was quoted saying he had “absolutely no comment” on the revelation. The *Independent* article, which was written by David Black and the paper’s Middle East editor Harvey Morris, did however concede that it was “still unclear why it took investigators so long to make the link”.

A few days later, on 19 December 1990, another *Independent* article gave a clue as to the source of the first one. Leonard Doyle from New York reported: “The former head of the CIA’s counter-terrorism section yesterday said the *Independent*’s report of a Libyan link to the Lockerbie bombing was accurate.”

Who was he? “Vince Cannistraro, who left the CIA in September.” Cannistraro had worked with Oliver North in President Reagan’s Security Council. He had been a leading figure in the illegal campaign to support the Contras against the revolution in Nicaragua, and the rebellion against the government of Angola by UNITA.

His speciality was Libya, and he became an expert above all else in providing and circulating information damaging to the Libyan regime. He had been head of the CIA inquiry into Lockerbie during all the period in which the finger of suspicion had been pointed at the Syrians. Exactly as the Syrians were joining the allied forces against Saddam Hussein, he confirmed that the new suspects for the bombing were Libyans.

With Libya at least tentatively in the frame, the investigators’ attention turned once more to Malta, where the clothes in the bomb suitcase had been bought from Tony Gauci’s shop in Sliema. Libya is close to Malta and the two countries have close links.

In 1989 and 1990 Tony Gauci had been interviewed again and again by police who, as the *Sunday Times* articles demonstrated, were anxious to link the buying of the clothes to terrorists in the PFLP-GC.

Gauci’s first interview with Scottish police was in September 1989, ten months after the bombing. He confirmed then that the clothes in the bomb suitcase were bought in his shop, and thus let himself in for more than 11 years of interviews in which he tried his best to identify the man who had bought them. All the early interviews with Gauci were designed to discover whether or not he had sold the clothes to known Palestinian terrorists.

In September 1989 he was shown a photo of Mohammed Salem, a Palestinian with Maltese connections, and signed it as “someone who looks like the man but is too young by 20 years”. At that time Mohammed Salem was in his mid thirties. In December 1989,



Abu Talb

Gauci’s brother Paul showed him an article in the *Sunday Times* series which featured a photograph of the *Sunday Times*’ chief suspect, Abu Talb, under the headline **BOMBER**. Gauci told his brother: “I thought that was the man who bought the clothes from me. His face and hair were similar.”

## GIAKA OF ALL TRADES

**T**HE position, then, as the US bombing of Baghdad started in January 1991, was that the police in the US and in Scotland had some tentative evidence linking a fragment found in the debris of Pan Am 103 with MST-13 timers some of which had been supplied to Libya and had revived their interest in Tony Gauci and his shop.

What they required for the pursuit of this line of inquiry was a suspect. Further inquiries by the CIA soon revealed that they already had, in their own control, a man who had defected to the CIA. He was allegedly from Libyan intelligence, who also had strong connections with Malta. His name was Majid Giaka.

He originally approached the American embassy in Malta in August 1988, four months before the Lockerbie bombing. His long series of meetings with American intelligence officials in Malta began in September 1988, the same month he started getting regular payments from the CIA.

His information was patchy and unreliable. He pretended he was a senior official in the Libyan intelligence organisation JSO though in reality (as the Americans quickly realised) he was a former garage mechanic who helped to maintain JSO vehicles and had graduated to the exalted position of assistant station manager for Libyan Arab Airlines.

The CIA kept him on their payroll with increasing reluctance. They had few other direct human contacts with Libyan intelligence, and in view of the

American hostility to Libya and the fear of terrorism from there, any source, even if unreliable, was better than none.

Scraps of information passed on by Giaka during 41 clandestine meetings between August 1988 and July 1991 were duly logged. In October 1988 he revealed that a managerial colleague at Luqa airport, Lamin Fhimah, had kept explosives in his desk drawer. In December 1988, the month of the Lockerbie bombing, he was asked about the movements of JSO officials through Luqa airport. He replied that a man he regarded as a senior JSO officer, Abdelbasset Ali Mohamed Al Megrahi, had passed through Luqa airport on 7 December. These two men eventually became the suspects for the Lockerbie bombing.

Yet none of Giaka’s information about them seemed even remotely interesting at the time, and the CIA agents in Malta began to grow weary of Giaka’s interminable visits. He begged for fake surgery to cause injury to his arm so that he could escape Libyan army service. He also wanted money to set up a hire car business in Malta.

He was becoming a nuisance and the agents told him so. On 4 September 1989, his CIA handlers in Malta told Giaka he was “on trial” until the next New Year (1990). Somehow he survived the New Year deadline but in February 1990 a CIA cable from Malta told headquarters: “Giaka is becoming desperate.” Giaka must have wondered how he survived those first few months in 1990, and how and why the payments continued. He could hardly have understood the significance or the relevance of the looming confrontation in the Gulf, though he must have noticed that the questions from his handlers about the JSO officers he had already named were increasing in intensity.

As the hot war started in the Gulf early in 1991, the US enquiries into the Lockerbie bombing gathered momentum. In February 1991, Scottish police showed photographs of Megrahi, the man Giaka had identified as a senior JSO officer more than two years previously, to Tony Gauci the Maltese shopkeeper. Gauci had said that the man who bought the clothes was at least 50 years old. Megrahi was 37. Yet the shopkeeper agreed that the photo resembled the man, “though he would have to be ten years older”.

This rather unreliable identification was enough for the CIA. They had their Libyan suspect. Indeed, if they could rid themselves of their original scepticism about Giaka, they had a second suspect – the man who, according to the self-promoting garage mechanic, had kept explosives in his desk drawer at Malta airport – Lamin Fhimah.

Suddenly the agent who had almost been sacked because he couldn’t come

up with any useful information became a man of supreme importance to the CIA. On 11 July 1991, the US Department of Justice let Giaka know that they would “accept or reject him based on his response to their inquiries”. On 12 July, with the Gulf War won and Saddam’s troops blitzed out of Kuwait, Giaka, to his intense gratification, was taken off Malta by an American warship, and interrogated there by an FBI officer, Hal Hendershot.

Before long he was safe in the US where he was later joined by his wife. He was paid a regular salary in exchange for constant interrogations by the CIA and the FBI. What he told them plainly satisfied them. In October, in conditions of great secrecy, he gave evidence to a US Grand Jury.

The result, in November 1991, was a detailed indictment charging Megrahi and Fhimah with murder by planting a bomb in a suitcase on a flight from Malta to Frankfurt and thence to London – and the explosion over Lockerbie.

The indictment came as a complete surprise to the British relatives of the Lockerbie dead. Though they were anxious that the trail, so hot in 1989, seemed to have gone dead in 1990 and 1991, they still believed that the police’s main suspects were the PFLP-GC and had no idea that Libyans, let alone the ones named, were even in the frame. Nevertheless, the Scottish legal authorities, led by Lord Fraser of Carmyllie, snapped to attention and announced that the two Libyans were now wanted for murder.

Lord Fraser said into the bargain that the case against both men was “incontrovertible” and the failure of the Libyan authorities to release them for trial in Scotland was an insult to international law. (*Eye* 783, 20 December, 1991). Almost at once (on 21 January 1992) the UN Security Council passed a resolution imposing sanctions on Libya unless the Libyan government released the two men for trial in the US or in Scotland, and renounced terrorism in general. The sanctions were renewed in March 1992 and November 1993 and remained in force for most of the rest of the decade.

## THE LONG STALEMATE

**D**URING all this period there was a stalemate on Lockerbie. The Libyan President Gaddafi refused to release the two suspects for trial and the US, Britain and the UN insisted that until he did so there could be no further progress on Lockerbie. The sanctions remained in force.

During this period all questions about Lockerbie were officially discouraged on

the ground that the two men were charged and the matter was *sub judice*. In many ways the stalemate satisfied both sides. The Libyan government and the two suspects were not obliged to state their case in public, and the United States government went on asserting the men’s guilt in the fairly confident certainty that they would never be released.

Scepticism about what became known as “the official version” continued unabated. Again and again, Tam Dalyell, the indefatigable MP for Linlithgow, raised the Lockerbie issue in the House of Commons, making plain each time that he was entirely dissatisfied with constant official ducking behind the *sub judice* fiction. He kept reminding the authorities of their previous commitment



Tam Dalyell, MP for Linlithgow

to the theory that Palestinians, Syrians and Iranians had been responsible for the bombing, not Libyans.

In January 1992, he embarrassed the government by reading out a report compiled by the Dumfries and Galloway police in March 1989, three months after the bombing. The report was entitled: **Bombing of Pan Am 103: Interview of Marwan Abdel Razzaq Mufit Khreesat as a suspect.**

The conclusion of the report was clear: “There can be little doubt that Khreesat is the bomb-maker for the PFLP-GC, and there is a possibility that he prepared the explosive device which destroyed Pan Am 103. As such he should not be at liberty.” (*See Eye* 786, 31 January, 1992). Other questions from Dalyell in 1995 about Khreesat were turned down by the House of Commons Table Office (*see PLAY IT AGAIN TAM, Eye* no. 872, 19 May, 1995).

Titbits of information about the case

against the Libyans leaked out to the public. In January 1994, the BBC Radio investigative programme *File on Four* revealed that the timers sold by Edwin Bollier’s firm had not, as claimed by the CIA, been sold exclusively to the Libyans. Some had been sold to the secret police of East Germany and therefore might have been used by a terrorist gang operating in West Germany.

This information was passed by the BBC to David Leppard of the *Sunday Times*, which promptly presented it as their own. The *Eye* reminded its readers, under the headline **HOW THE LEPPARD CHANGED ITS SPOTS**, that Leppard had in 1989 comprehensively convicted Iranians, Syrians and Palestinians of the Lockerbie bombing, but had since published a book accusing Libyans.

In August 1997, the German magazine *Der Spiegel* published a long article about Lockerbie that was completely ignored in the British Press. It cited “a new witness who has been making detailed statements to the German police and prosecutors”. The man was named as Abolghasem Mesbahi and was described as “a credible witness”. What he was saying contradicted “the Anglo-American thesis of the sole involvement of Libya”.

Mesbahi’s story was as follows: “The bomb had been loaded in single pieces at Frankfurt airport into an aeroplane to London. The head of Iran Air at Frankfurt at that time, a secret service man, had smuggled them past the airport controls. They had then been assembled in London and put on the Pan Am clipper.” *Der Spiegel* commented wryly that “if Mesbahi’s statements were proved to be correct, then the theory held up to now that Libya was the sole perpetrator, is out.”

Despite *Der Spiegel’s* evidence for the credibility of Mesbahi, and his numerous high-level contacts in Iranian intelligence, this story was quickly and effectively buried.

In Britain meanwhile the new Labour government elected in May 1997 wrestled with the Lockerbie stalemate. The former Labour leader Neil Kinnock had promised the relatives of the dead that he would set up the public inquiry they wanted, but his successors John Smith and Tony Blair had been more circumspect. The indictment against the two Libyans, they argued, made it impossible to hold an inquiry without being in contempt of the Scottish courts.

Ministers in the new government, however, responded sympathetically not only to continued debates in the House of Commons – usually initiated by Tam Dalyell – but also to the relatives in person. Neither Thatcher nor Major had agreed to meet the relatives, but on 10

December 1998, a week before the 10th anniversary of the disaster, Prime Minister Tony Blair did so, and the foreign secretary Robin Cook and his ministers had already made it clear that they would seek to negotiate a way out of the stalemate.

In this endeavour they had substantial help from Tam Dalyell, from Jim Swire, whose daughter died on the bombed plane, and from Professor Robert Black of the department of law at Edinburgh University, all of whom sought a way out of the impasse.

Professor Black had been involved in the case from soon after the disaster, and in 1994 first formally proposed a trial at an international court presided over by international judges. This proved totally unacceptable to the Scottish judiciary, so Professor Black and his fellow negotiators fell back on the idea of a hearing on neutral territory in Europe presided over by Scottish judges.

There were two immediate problems. The first was the Libyan government and its president Colonel Gaddafi, who for obvious reasons was unhappy about releasing his subjects for a foreign trial. The second was the United States government which stuck firmly to its insistence of a trial either in Scotland or, preferably, in the United States.

## ENTER MANDELA

**T**HE stalemate seemed cast in concrete, and was only broken eventually by the sustained and passionate intervention of Nelson Mandela, President of South Africa.

Mandela was irritated by the continued sanctions on Libya. He was friendly with Gaddafi, who had contributed generously to the African National Congress, Mandela's party, when it was engaged in illegal and armed opposition to the apartheid regime.

He firmly believed that Libya was being singled out for special hostility by the United States, and in the case of Lockerbie he regarded the treatment of Libya as unfounded and unfair. To the intense irritation of the US State department he launched a diplomatic offensive to persuade Gaddafi to release the two men for trial by Scottish judges in Europe.

He chose as his chief negotiator and plenipotentiary his most trusted adviser and confidant, the secretary to the South African Cabinet and head of the country's civil service, Professor Jakes Gerwel, former vice chancellor of the University of the Western Cape. Mandela also persuaded Prince Bandar bin Sultan of Saudi Arabia to take part in the negotiations with Gaddafi. The prince and the cabinet secretary, Mandela knew, were trusted by the Libyan president as



President Mandela and Gaddafi

much as anyone else in the world.

The negotiations went on for a year until 5 April 1999 when the two suspects finally gave themselves up for trial by Scottish judges under Scottish law (with one exception: everyone agreed that the men should be tried without a jury). On that morning Professor Gerwel wrote a dramatic and moving account of the negotiations:

*"As I write this, I am sitting in a Libyan Air Force plane high over the desert flying to Djerba, the airport in Tunisia from where I so often in these last twelve months had to undertake that five-hour car journey to Tripoli and back, because of the UN embargo on direct flights to Libya.*

*"This flight itself is historic; it is the first across Libyan borders since the suspension of sanctions came into effect earlier this afternoon. Prince Bandar bin Sultan, my Saudi counterpart and negotiating partner, and I are returning from a visit to pay respects to the Libyan leader Colonel Gaddafi in the oasis town of Sebha far down south in the great Libyan desert. Earlier tonight the three of us were sitting there, almost huddled together in one of those large and colourful makeshift tents the Colonel loves so much: talking, reflecting, ruminating, laughing sometimes ruefully and at times raucously over muscular Arab jokes.*

*"In some ways we are for these few hours three men far away from the maddening crowd; in various stages of over fifty, from different political and social backgrounds and countries but for that time just three men enjoying each other's company. In other*

*respects the world remains with us: we talk, even though with almost disinterested passion, tonight of Kosovo and our different readings of it: Gaddafi and Bandar banter about Arab politics and let Jaakis (as Gaddafi calls me) into it. As Africans Gaddafi and I solve the problems of our continent with Bandar fully sharing as contributing translator.*

*"Overall our conversation and banter, though, hover, like bats on a Karoo night, our unspoken thoughts of Megrabi and Fhimah, Libyan sons whom all three of us have handed over to foreign jurisdiction. Understandably, most would see this day as one of proud achievement and fulfilment for us – for President Mandela, South Africa, myself personally and our negotiating allies, the Saudi sovereign and Crown Prince and Prince Bandar in particular. Yet one's major feeling tonight is one of quiet sadness.*

*"This morning was the first time that I or Bandar met Megrabi or Fhimah. The two of us were there as special guests of the government and people of Libya. Many will now claim the credit for this saga being concluded. If you were to ask the Libyans and Gaddafi you will be told that it was the word and moral authority of Mandela that provided to them sufficient guarantee and persuasion to take this step. And concretely that it was Jakes and Bandar who patiently over many months, many meetings over long hours of discussion often late into the night built personal relations of trust with the Leader. Gaddafi deeply*

*distrusts the West and the United States in particular, while their distrust and vilification of him are no less intense. In the end it was us that he trusted and because of whom he conceded.*

*"Now we are here this morning to be a Libyan part of the surrender of the two men. We were first let in to greet the men and sit with them prior to departure. We were the two asked to accompany them on to the tarmac and to the plane. All along Bandar and I had been dealing with matters of international diplomacy, politics and law, seeking to secure the 'handing over of the suspects'. Now beside us were two men, fathers of five and seven children respectively. He married at 21, Fhimah explains his seven children to me. They (Megrahi and Fhimah) are smartly dressed in Italian suits and look exactly like two gentlemen from Belhar where I live. They carry heavy overcoats and remark about the cold this time of year. I shiver when I think of the kind of cold they are going to."*

The terms for the release and trial of the two men were set out in an annex to a letter to the Libyan head of state from the secretary general of the United Nations, Kofi Annan, a few weeks before the men's surrender on 17 February 1999. They would be "transferred from Libya to the Netherlands and tried under Scottish law before a Scottish court sitting in the Netherlands". If found guilty, after any necessary appeals process, they would serve their prison sentences in Scotland. If not convicted, they were free to return to Libya unimpeded. They would be absolutely free from any interview unconnected with the trial. They "will not be used to undermine the Libyan regime".

In exchange, the security council sanctions resolutions 748 and 883 would be suspended immediately the two men arrived in The Netherlands, and could only be re-imposed by a vote of nine members of the Council, including the votes of all permanent members.

The sanctions were suspended in April 1999, and an entirely new court was built at great expense at a disused military base at Camp Zeist near Utrecht in Holland.

## HARDIE AMISS

**THREE judges were appointed – all Lords. In the chair was Lord Sutherland, 68, a Queens Counsel since 1969. The others were Lord Coulsfield, 66, QC since 1973, and Lord Maclean, 61. The prosecution was originally to have been led by the Blairite peer Lord Hardie, the new Labour Scottish Lord Advocate. Not long before the trial started, Lord Hardie applied to become**

### **a High Court judge and dropped out as chief Lockerbie prosecutor.**

The *Eye* reported (*no. 1001, 5 May, 2000*): "Hardie had been a pivotal figure in the authorities' handling of the Lockerbie disaster. During the last Tory administration he served as deputy Crown spokesman at the 1990-91 fatal accident inquiry into the disaster.

"His abrupt decision to cut off all connection with the trial only two-and-a-half months before it was due to begin was greeted with consternation by the relatives. On 18 February Pam Dix, secretary to UK Families Flight 103, whose brother died at Lockerbie, wrote to Lord Hardie to express the families' 'great surprise and indeed shock' at his decision. 'I would be grateful,' she continued, 'if you could clarify whether the decision was yours alone.' So disturbed was the noble lord by this anxious letter that he did not bother to reply."

Lord Hardie was replaced as Lord Advocate by his successor Colin Boyd QC and his Advocate Depute Alistair Campbell QC. They were supported by yet another QC, Alan Turnbull and two American lawyers who sat with them. Megrahi was represented by William Taylor, QC, 56, a former Edinburgh Labour councillor and a Parliamentary Labour candidate. Fhimah's QC was Richard Keen, 46.

The key solicitor for the defence, who represented Megrahi, was Alistair Duff, a criminal lawyer from Edinburgh, who had been associated with the case since first approached in 1993. Mr Duff has a reputation in Scotland for believing in and fighting for his clients: a reputation powerfully vindicated throughout the Camp Zeist trial. The trial opened on 3 May 2000 and dragged on through numerous postponements and delays until judgement day on 31 January 2001.

From the outset it was clear that the trial would take so long and its proceedings were so insufferably boring that few journalists would last the pace. The point was made graphically by the BBC's crime correspondent Joshua Rozenberg. Rozenberg was, and is, a firm believer in British justice. He had recently published a rather flattering analysis of British judges. He was horrified by what he found at Camp Zeist.

He wrote an article for the *Guardian*, published on 5 June 2000. **WHO BROUGHT DOWN THE LOCKERBIE TRIAL?** asked the headline. **WHY IS THE MOST IMPORTANT TRIAL IN THE WORLD BEING IGNORED BY THE MEDIA?** The entire proceedings seemed to him to be plunged into chaos and impossible to follow.

Facilities for journalists, though lavish, were absolutely useless when it came to finding out basic information. Even the list of witnesses was withheld from the media. The lawyers were separated from the journalists, public and relatives of the dead by screens. The reporters had nothing more to go on than the formal indictment issued nine years previously.

The Lord Advocate Colin Boyd didn't like questions, and found it hard to explain why "an official from the United States Justice Department sits next to prosecution lawyers in court"; or what the official told the victims' families at briefings every evening; or why the prosecution again and again ran out of witnesses, forcing unnecessary adjournments.

The whole trial seemed to be deliberately bungled up with issues that would never have arisen in an ordinary criminal case, and hours were wasted on what seemed to be quite uncontroversial evidence. No wonder, thought Rozenberg as he headed for home, so many journalists were giving the trial up for lost, and so little even of the bare bones of the proceedings were appearing in the media. "Justice will be the loser," he predicted grimly, and he was right.



*Lord Hardie, Blairite peer and former Lord Advocate of Scotland (right) and his successor Colin Boyd QC*

## Chapter Three

## TRIAL...



Left to right:  
Lords  
Coulsfield,  
Sutherland  
and Maclean

## I'M ALL RIGHT, GIAKA

**F**OR many years before the Camp Zeist trial there were carefully-nurtured rumours that the CIA and the American Justice department had been taking care of a witness who would conclusively prove the guilt of the two defendants.

These rumours appeared in the *Eye* as early as 31 January 1992 (*no. 786*). "What is the evidence which leads the US government and, in pathetic chorus, the Scottish Lord Advocate and his government in Whitehall to the certainty that the two Libyans are responsible? The answer is that they have 'a witness'."

When documents started to be revealed before the case, this witness turned out to be the garage mechanic Abdul Majid Giaka, who had been spirited out of Malta on an American warship soon after the Gulf War was over in July 1991. Down on his luck, irritated by his employers in the Libyan intelligence JSO, Giaka secretly approached the CIA in the American embassy in Malta several months before the Lockerbie bombing.

For many months after the bombing he said nothing at all about Lockerbie, even when he was asked about it. The CIA's rather bleak assessment of Giaka in all those months was sent back to CIA headquarters in the US by cable from Malta. These cables became an early issue of contention between the

prosecution and defence.

At first the CIA resisted any disclosure of the cables, and when they were eventually disclosed many had been censored with whole paragraphs and sentences scored out, or "redacted". By early August 2000 it emerged that the prosecution in the case had seen the cables before they had been censored, but these had not been shown to the defence.

This unusual approach to disclosure was stoutly defended in open court by the new Lord Advocate of Scotland, Colin Boyd, a Minister in the New Labour administration. "I emphasise," he told the judges on 22 August 2000, "that the redactions have been made on the basis of what is in the interests of a friendly power. In my submission there is nothing unusual in Crown counsel being aware of information which the defence is not aware of."

Boyd and his team were rather ill at ease when pressed by the judges to ensure that there was nothing in the censored cables to affect the credibility of the Crown's star witness, Giaka. Eventually, after much argument, the uncensored cables were released. It became clear at once that there was no doubt at all that the cables utterly destroyed the credibility of the imaginative garage mechanic.

To start with, he had repeatedly lied to the CIA to impress them with his own importance. He told his handlers he was related to the former King Idris of Libya, which he wasn't. He denied saying any

such thing but could not explain how his handlers arrived at such an absurd invention. He grossly exaggerated his role in the JSO and even suggested that he had "long-standing personal relations" with Abdullah Senussi, the head of the JSO's operations administration. He had not – he hardly knew Senussi.

It was obviously important for Giaka to impress his CIA contacts. He depended on them for money – he got a thousand dollars a month rising to \$1500. The CIA showered him with gifts of clothing and radio sets, and even arranged for sham surgery to his arm. But in spite of this largesse the CIA handlers in Malta got increasingly fed up with Giaka's prevarications, and started to conclude he was not worth the money.

By December 1990, their cables described Giaka as "desperate". Somehow he managed to keep the CIA's confidence all through the Gulf War but by July 1991 his situation seemed to be even worse. The CIA contacted him in Libya, and he returned to Malta to meet them. He was told that a meeting had been set up with officials from the US Department of Justice, and that his future depended on what he disclosed at that meeting.

Almost at once he started to barter with his handlers, only to be met with a threat that unless he could come up with something about his former colleagues in the JSO that might incriminate them in the Lockerbie



bombing, he would be abandoned in Malta and cut off without a penny. At the trial, on September 26 2000, Mr Taylor asked him:

**Q.** You see, you've been told that you are going to meet the Department of Justice; you've been told that you are going to be cut off without a penny unless you come up with some evidence that they like. There are no guarantees. And you are being asked to go on an American warship. All that I am suggesting to you is that you indicated to your handler that there was no concrete commitment from America at this stage, and you wanted one. You were upset that the Americans had not given a concrete commitment.

**A.** I expressed the fact that I was not happy with the way they had contacted me.

A little later, the exchange continued:

**Q.** The cable goes on: "During a rather emotional discussion, Giaka revealed that his wife is four months pregnant, and with the added responsibility of a family he needed to know more about his security... without making any firm commitments, and pegging the Department of Justice meeting as Giaka's last hope for his wife and baby, we were able to convince Giaka of the merits of the exit scheduled to begin later that afternoon." You see the documents speak for themselves. They build up to a crescendo as I've described. It's not me that is doing it. It's the documents that are doing it. And lo and behold the deafening silence (about Lockerbie) ends the very next day, when you come up with a brown Samsonite suitcase and this rubbish about Customs. The very next day is the first mention by you, Giaka, of these matters. What do you have to say about that?

Giaka could only stammer: "When I met with the representatives of the Department of Justice, they are very good investigators, and they can distinguish truth from lies. One way or another, they can obtain what they want."

## THE ACQUITTAL OF LAMIN FHIMAH

**E**VERY little bit of information incriminating Megrahi and Fhimah was imparted by Giaka either in the hope of financial reward or under threat of being cut off by the CIA.

The credibility of this palpable liar need not detain us much longer. It was well summed up by the judges who variously described Giaka's evidence as "at best grossly exaggerated, at worst simply untrue" and "largely motivated by financial considerations". They concluded: "Putting the matter shortly, we are unable to accept Abdul Majid [Giaka] as a credible and reliable witness

on any matter except his description of the organisation of the JSO and the personnel involved there."

Giaka's evidence had been absolutely crucial to the prosecution case against Fhimah. In one of the many twists in his story, he had linked Fhimah to a Samsonite suitcase at Malta airport on the day of the Lockerbie bombing. Without this evidence there was really no case at all against Fhimah, and the judges duly acquitted him.

There were however three points about Giaka's appearance at the trial and his evidence that were overlooked by the judges.

First, why was such an obviously corrupt and desperate liar produced by the prosecution at all? The wretched



*William Taylor, QC for Megrahi*

Giaka's total dependence on the CIA, FBI and the Justice Department was exposed throughout his evidence. In answer to difficult questions, he gazed pathetically and helplessly from behind his screens at his American minders sitting in the court with the prosecution. The very fact that the prosecution should rely on a man who had been so remorselessly bribed to invent a story was a measure of the depths to which the Crown lawyers were prepared to sink.

The second point concerned the timing of Giaka's miraculous revelations. At first he had nothing at all to say about Lockerbie. His lack of interest and knowledge about a Samsonite suitcase at Luqa airport lasted all through 1988, 1989 and 1990 and only surfaced in detail when the Gulf War was waging and the political map in the Middle East

was changing. The third point was that the names of both defendants, Fhimah and Megrahi, had first come to the attention of the authorities from the mouth of the mendacious double agent Giaka.

Acquit Fhimah, and remove Giaka, as he should have been removed long before the trial, and what was the remaining evidence against Megrahi? The story told by Advocate Depute Alistair Campbell for the prosecution went like this: Megrahi had bought clothes at Mary's House, Sliema, Malta, some time before the bombing; he had been at Malta airport on 21 December 1988 and had managed to smuggle an unaccompanied Samsonite case packed with the clothes and an explosive device onto a flight to Frankfurt; whence it was unloaded and transferred to Pan Am 103A to London. In London, the story went on, it was unloaded again and transferred to Pan Am 103 bound for New York. With Fhimah acquitted, conspiracy charges dropped and no one else indicted the court was left with no other possibility than that Megrahi did all these things himself or with persons unknown and utterly unidentified.

## THE MALTESE CONNECTION

**W**HAT was the evidence that the bomb went on a plane at Luqa airport, Malta? None whatever.

Reject the evidence of Giaka, as the judges did, and you are left, as they freely admitted, with no evidence of any kind that a bomb was smuggled on to a flight to Frankfurt. We have seen how, in the libel action brought by Air Malta against Granada, the evidence collected by London solicitors Norton Rose provided overwhelming evidence against the theory that any unaccompanied bag, let alone one loaded with a bomb, went on the Frankfurt flight. Fifty-five bags were counted onto the flight and 55 bags counted off it at Frankfurt. All were reconciled with the passengers on the flight, none of whom travelled on to Heathrow. The judges concluded (para 39):

*"If therefore the unaccompanied bag was launched from Luqa, the method by which it was done is not established and the Crown accepted that they could not point to any specific route by which the primary suitcase (with the bomb in it) could have been loaded. The absence of any explanation of the method by which the suitcase might have been placed on board KM 180 (the flight from Malta to Frankfurt) is a major difficulty for the Crown case."*

It was more than a "major difficulty". For if the bomb suitcase did not go on the flight from Malta, then that was the

end of the prosecution case. The connection of the bomb to Malta was an absolutely necessary condition for the entire prosecution.

There was however some evidence that an unaccompanied bag from the flight from Malta was loaded at Frankfurt onto Pan Am 103A to Heathrow. This evidence was seized on by the prosecution, and became the lynch-pin of their case.

It depended on two pieces of paper. The first was a worksheet of the operator who coded the baggage from the Malta flight into the computerised baggage system at Frankfurt. This man's name was Koca. He was crucial to the prosecution case, and was listed as a prosecution witness, but was not called to give evidence. No explanation for Koca's mysterious absence from the witness box was offered by the prosecution.

Koca's worksheet showed that he started coding the bags from the Malta flight at 13.04 on the afternoon of 21 December 1988. The time he finished coding the bags was, and still is, a mystery. Mr Koca's handwriting was so vague that the finishing time could have been 13.10 or 13.16. The difference between the two turned out to be crucial since the entire supposition that a bag from Malta went on the flight to Heathrow depended on the coincidence in time between Mr Koca's worksheet and a print-out from the computerised records at Frankfurt airport.

This was printed out on the day after the Lockerbie bombing by Bogomir Erac, who was in charge of the software for the baggage system at Frankfurt. She recovered the print-out in case it revealed anything interesting about the luggage loaded on to flight 103A to Heathrow, which linked to the separate and doomed flight 103.

Mr Campbell for the prosecution explained: "The printout shows that at 13.07 on 21 December 1988, tray number 8849 was coded in at a coding station with reference number S0009. The interpretation document shows that reference number S0009 means coding station 206. Each tray holds one piece of luggage. From that it may therefore be concluded that a bag from KM 180 (the Maltese flight) was transferred as an interline bag from KM 180 through the computerised baggage system to Pan Am 103A. As all the passengers recovered their luggage and none were booked for onward travel to the United States, it may be concluded that the bag was an unaccompanied bag."

Perhaps naturally, Mr Campbell did not emphasise that his conclusion, so vital to his case, depended entirely on the coincidence in timing between the bags from Malta being coded at station 206 in between 13.04 and 13.10 or 13.16

and a bag for Pan Am 103A being coded at the same station at 13.07. This was the coincidence in timing that convinced not only the prosecution in 2000, but the Dumfries and Galloway police, the CIA and the *Sunday Times* eleven years earlier so soon after the bombing.

There were clothes in the bomb suitcase that had been bought in Malta – and here, apparently, was proof on a computer at Frankfurt that an unaccompanied bag from a flight from Malta had been transferred at Frankfurt on to a feeder flight to the plane that ended up in pieces round Lockerbie.

There were however huge holes in the coincidence that depended upon such split-second timing. Mr Taylor for Megrahi emphasised the point that no one could say what kind of bag had gone on 103A at Frankfurt, or even whether it

submissions, showing in the most meticulous detail how the timings on the coders' worksheets could go wrong, or how the computer clock could slip out of line with the coders' watches. Staff at Frankfurt airport in December 1988 were under great pressure to shift luggage fast, and the coders were far more interested in the destination of luggage than in where it had come from. Even the slightest discrepancy in time, he argued, could ruin the coincidence on which the prosecution relied, and could jeopardise the possibility that a bag from the Maltese flight went on to 103A.

Methodically, Mr Taylor examined both possible end-times for the coding of bags from the Maltese flight. If the end-time was 13.10, he said, and the coder's watch or clock was "fast by one or more minute, then the encoding for KM 180 will have concluded by the time the entry was made". If, on the other hand, the end-time was 13.16 this left a gaping hole in time when other bags may have been encoded through the same station that did not come from Malta at all.

Indeed, another flight, from Damascus, had arrived at Frankfurt at almost the same time as the Malta flight. Most of the bags from Damascus had gone to coding stations 202 and 207. And one-and-a-half wagons of luggage from that flight could not be accounted for. "It seems a not unreasonable inference," concluded Mr Taylor, "that some of this baggage, even if only half a wagon, was encoded at station 206 between 13.04 and 13.16." In other words, if the coding of bags from Malta was finished at 13.10, it took only a tiny discrepancy in clocks and watches to ensure that all the bags had been coded by the time the suspect bag went through the system. If it did not end until 13.16 there was every likelihood that other bags from other flights were being coded, any one of which could have ended up on flight 103A. To back up this reasoning, Mr Taylor referred again and again to the voluminous evidence of baggage handlers and supervisors at Frankfurt airport to the effect that mistakes, especially small mistakes in timings of the type that would have destroyed the prosecution case, were commonplace.

Even if such an interline bag from Malta had got through the coding station at Frankfurt, it would have been x-rayed by staff who were on special alert for explosive devices packed in electronic equipment. The man running the x-ray machine was Kurt Maier. He was ill, so his evidence was given to the court through his statements. These confirmed, as did his colleagues that a) he was a careful operator and b) that on 21 December 1988 he had been warned to look out for electronic devices such as Toshiba cassette recorders.

### Just fancy that... or not as the case may be

**Lord Sutherland:** Thank you very much, Mr Salinger. That's all.

**Salinger:** That's all? You're not letting me tell the truth. Wait a minute. They're not letting me tell the truth. I know exactly who did it. I know exactly how it was done. You have to do that here.

**Lord Sutherland:** Mr Salinger, we will run the court in accordance with our normal principles. We rely upon counsel in this court to ask the questions that they think are relevant, and we will deal with that information. If you wish to make a point somewhere, you may do so elsewhere, but I'm afraid you may not do so in this court.

was a bag at all. It could have been a wine crate or a set of golf clubs. Nothing in the computer system described the bag on tray number 8849.

The only proof that it had come from Malta was the time it was encoded – 13.07. The whole proposition, said Taylor, depended "on your Lordships accepting a degree of accuracy in relation to documentation, time recording and work practices, none of which are warranted". The whole theory depended on the exact and coincidental accuracy of the computer clock at Frankfurt airport and the watches of the coders from which they took the times they entered on their worksheets. The picture was made all the more confusing by the absence of Mr Koca – the witness who was directly involved.

Mr Taylor spent much of 12 January 2001, the second day of his four-day

His equipment could identify recorders and any explosive packed into them. He x-rayed all the interline baggage which was loaded on Pan Am 103A, but did not see anything remarkable enough to make him stop the machine and call his supervisor. So even if a bag that apparently never left Malta arrived in Frankfurt and was coded into a station for Pan Am 103A to London, it would still have had to pass the vigilant eye of an x-ray specialist at Frankfurt who had recently been instructed of the dangers of explosives packed in Toshiba cassette recorders.

## THE HEATHROW CONNECTION

**N**O subject absorbed the trial more than the question: at which airport did the bomb suitcase first go on the plane?

As we have seen, there was no evidence that it got on at Malta; and debatable documentation to suggest that it went on at Frankfurt. Another theory, fielded at great length and thoroughness by Mr Taylor for Megrahi was that the bomb suitcase went on Pan Am 103 at Heathrow, London.

Mr Taylor produced 20 points in support of this proposition. The most powerful of these was that a "maroony brown Samsonite" suitcase was put on the baggage container that carried the explosive device to the plane. This evidence came from the man who loaded the container, Heathrow employee John Bedford.

He said that in the late afternoon of 21 December 1988 he'd left the container on the tarmac during his tea break before he loaded its baggage on the plane. When he returned from his break, which he estimated at three-quarters-of-an-hour, he noticed that there were two extra bags in the container, and one was a "maroony brown Samsonite". No other passenger on the plane had such a case, and all the experts agreed that a Samsonite case exploded with the bomb in it.

John Bedford gave evidence at Camp Zeist but he was not asked to rely on his memory of what had happened 12 years previously. He had been asked about these matters only a fortnight after the disaster, on 3 January, 1989. In that police interview, at the fatal accident inquiry and at Camp Zeist he continuously and coherently repeated the story of the Samsonite case. This was the only direct evidence from anywhere that a Samsonite case was loaded at any of the relevant airports. Moreover, Mr Taylor insisted, the case ended up in the precise position a) where an explosion in it would cause the maximum damage and b) exactly where the forensic

evidence suggested it was at the time the bomb exploded.

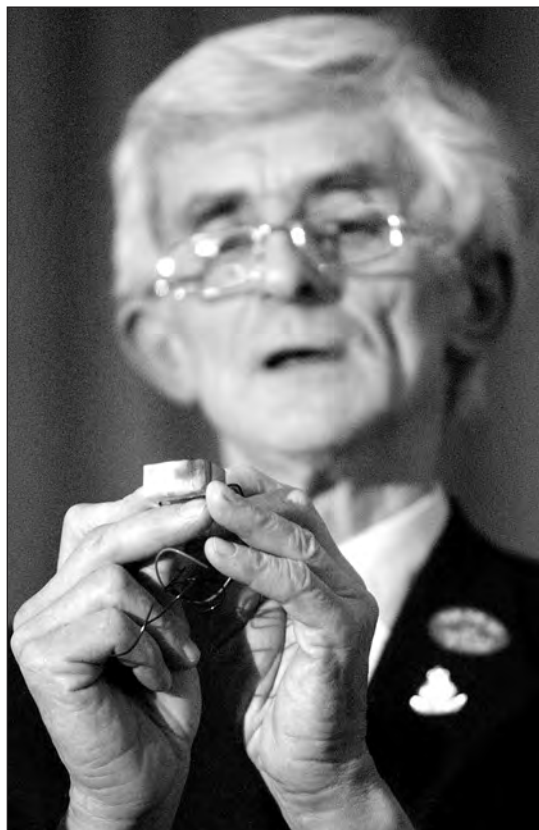
Who put the bag on the container? Mr Bedford told the fatal accident inquiry that another baggage handler, Sulkash Kamboj, had told him that he, Kamboj, had put the bags on after x-raying them, but in interviews with the police at the time and again on oath at the fatal accident inquiry Mr Kamboj denied saying any such thing.

In the background of the picture of chaotic, insecure conditions at Heathrow airport in December 1988, Mr Kamboj also pointed out that "anybody" could approach a container with luggage and slip another bag in; and that the x-raying of bags for Pan Am 103, of which he was in charge, was not covered by the warning issued at Frankfurt – to keep a special look-out for electronic devices such as Toshiba cassette recorders.

This rather devastating information available so soon after the disaster, namely that a bag exactly similar to that which contained the bomb, was put into the container from which the bomb eventually exploded, was greeted at the time with strangely scant interest. We have seen how Paul Channon, Transport Secretary, had told the House of Commons soon after the disaster that the luggage with the bomb probably didn't go on at Heathrow, but the only evidence from any airport that a Samsonite had been loaded was from Heathrow. "My submission," said Mr Taylor at the end of his long and meticulous submission on this subject, "is that all of the above render the choice of Heathrow a much more likely one. And when that possibility is considered, one finds that there is a compelling body of evidence that points to Heathrow as being the point of ingestion."

There was further technical evidence that the bomb went on at Heathrow, provided by two witnesses who did not get much publicity. John Scott Orkin, a CIA electrical engineer, gave evidence on 17 November, 2000, and told the court how the barometric timer usually used by Middle East terrorists worked.

"Normal operation of the timers would be to connect a battery to the terminals and place the switch in an 'On' position. After the timing cycle is completed, a small incandescent lamp will light and be seen through the transparent potting material. This test phase is very important for these timer designs since it conditions the timing capacitor and will tend to stabilise the



*Jim Swire demonstrates the ice-cube timer which would have detonated the bomb on Pan Am 103 at exactly the time it exploded*

time delay as discussed below." This, he said, was known as the "ice-cube timer" and was a far more inaccurate form of timer than the MST-13, but it was the one usually used by terrorists in the Middle East.

A clearer description of this ice-cube timer was given the same day by Rainer Gobel, physicist for the German police, the BKA. He had a remarkable insight into how long such a timer would take to set off an explosion. "Pressure change in the cabin," he said, "is regulated automatically. It happens more slowly than the drop of pressure in the air through which the plane is flying, which means, according to the documents which were provided to me, in a plane of the aforementioned class, about seven minutes after take-off the pressure within the cabin will have dropped to such an extent that 950 millibars or hectopascals will have been reached at which the barometric gauge would be involved and a circuit, a current, would be activated."

The device would be set off by the change in the pressure in the aircraft. How long would it take to set off the explosion? Mr Gobel read out an evaluation from his own report: "The course of the operational sequence of the detonators examined, and taking account of unavoidable tolerances, fits in very well with the conditions during take-off and the initial flight phase of PA 103 from London to New York. The design of



*The reconstructed baggage container which went in the hold of Pan Am 103 with the bomb suitcase*

the devices is such that it would have been impossible, we conclude, for a primed explosive designed as above to have been carried on flight PA 103 from Frankfurt to London without detonating and that the same explosive would then have detonated 38 minutes into flight PA 103 from London to New York. If we assume that an explosive of similar design was used for the attack, it must have been put on board in London, or at least primed there by plugging in the main switch."

The significance of this evidence appears to have been lost on the prosecution. It was that if an ice-cube timer of the type conventionally used by Middle East terrorists was used in the explosive device that blew up the plane over Lockerbie, it would not have been put on luggage at Frankfurt unless it was re-primed in London; and, more significantly, if it had been put on the plane at Heathrow, the bomb would have exploded 38 minutes into the flight – exactly the time it did explode.

This staggering coincidence of times was not properly addressed by the prosecution whose spokesmen assumed throughout that the timer used to explode the bomb over Lockerbie was the much more sophisticated MST-13.

For a start, as Mr Gobel explained, the MST-13 would have ensured that the bomb would go off at a time selected much more accurately by the people who put it on the plane, who were more likely to choose a time on a trans-Atlantic flight when the plane was over the sea. But the whole MST-13 theory was, anyway, riddled with contradictions and difficulties.

We have seen how the tiny fragment

of metal was found in a shirt recovered from the plane's debris by a Scottish policeman, who could not explain why he interfered with its label; how it was transferred to RARDE where four months later it was examined by Dr Hayes; how Dr Hayes re-paged his notes at just the day he was examining the fragment; how four months later still Mr Fereday sent it back to the Scottish police, apologising for the urgency (four months delay) which had obliged him not to take a proper photograph or even a drawing of the fragment; how Fereday and his fellow investigators in the Scottish police went to Washington to look at an MST-13 timer and to examine its alleged similarities to the fragment found after Lockerbie.

The whole story stank. It also suggested that the fragment, even if it was genuine, was anyway unlikely to be conclusive evidence of the type of timer used at Lockerbie. Nevertheless the meeting with Thurman led Scottish police to Senegal and then eventually to Edwin Bollier and Erwin Meister and their firm MEBO in Switzerland.

*Bollier and Meister gave long, confusing and contradictory evidence at Camp Zeist.*

Three facts emerged unchallenged. The first was that Bollier had had close contacts with the Libyan government and had in the past sold them MST-13 timers. The second was that he had never seen the fragment which, he was told, was supposed to be part of one of his timers, so could not comment on it. The third was that although he had initially said that all his MST-13 timers had been sold to Libya, he now accepted that at least some had been sold to the

East German secret police, the Stasi, who had co-operated in several terrorist bombings in Western Europe. A former Stasi officer confirmed that his force had indeed bought MST-13 timers from Libya, though he thought they had all since been destroyed.

The fragment led to Bollier, and Bollier led, at last, to a real human suspect. He was asked about the Libyan intelligence agents identified by Giaka. Yes, he said, he knew Megrahi with whom he had done business. He had, in his dealings with Libya, some contact with Megrahi and had rented an office in Switzerland to a firm in which Megrahi was involved. As for the timers, Megrahi and Bollier didn't even meet each other until two years after the timers were supplied.

Excluding Giaka and Fhimah, the position for the prosecution was therefore as follows. Megrahi was at Luqa airport on the morning of the bombing. He was travelling at the time under a false passport. There was no evidence at all that he or anyone else put the bomb suitcase on another plane to Frankfurt; no evidence indeed that Megrahi had ever seen or had any contact with any explosive material, still less that he had put it on a plane.

This summary of "evidence" was hardly enough even to hope to convict anyone. Something else was necessary to link Megrahi more closely to the actual bombing. The police and intelligence investigators fell back on the witness they had interviewed so often in the year after the bombing; the unfortunate shopkeeper of Mary's House, Sliema, Tony Gauci.

## TONY GAUCI

**WE HAVE seen how many times Gauci was interviewed by police in the two years after the bombing, especially in 1989 and 1990, and how at that time the chief suspects were Palestinians connected to Syria and Iran; how keen the police were to elicit from Gauci a credible identification of the man who bought the clothes which ended up in the bomb suitcase over Lockerbie.**

We have seen how, at Camp Zeist, more than eleven years after he sold the clothes, and at a time when pictures of Megrahi had been plastered over press and television, Gauci picked Megrahi from an identification parade as the man to whom he sold the clothes. In the absence of any other credible evidence this identification by Gauci became crucial in the attempt to link Megrahi to the bombing. It divided itself naturally into two sections.

All the early media reports of the Maltese connection, especially the long series in the *Sunday Times*, assumed that

the clothes were bought late in November 1988, or as the *Sunday Times* pointed out, "a month before the bombing".

These assumptions were drawn from the early interviews with the shopkeeper, Tony Gauci. On 19 September, 1989, Gauci asserted in a statement to police: "At Christmas time we put up the decorations about 15 days before Christmas. The Christmas decorations were not up when the man bought the clothes." On 10 September, 1990, Mr Gauci told DCI Bell of the Scottish police: "I've been asked to try again and pinpoint the day and date I sold the man the clothing. I can only say it was a weekday; there were no Christmas decorations up, as I have already said, and I believe it was at the end of November."

Mr Gauci was able to provide the court with a clue as to the date the clothes were sold. His brother Paul, who normally assisted him in the Sliema shop, was not there when the man called. He had, said Mr Gauci in evidence "gone home to watch a football match on television. He may be able to recall the game, and this could identify the day and date that I dealt with the man at the shop." Paul Gauci was duly listed by the prosecution as a witness, but in what Mr Taylor called "a continuing refrain in this case" he was not called to give evidence.

The *Eye* has obtained some of Paul Gauci's statements to the police, including one on 19 October, 1989 to DCI Bell from Dumfries and Galloway and Inspector Scicluna of the Malta police. "On Thursday 19 October 1989 Mr Bell called at my shop at 63 Tower Road where I was shown a list of European football matches I know as UEFA. I checked all the games and dates. I am of the opinion that the game I watched on TV was on 23 November, 1988: SC Dynamo Dresden v AS Roma. On checking the 7th December 1988, I can say that I watched AS Roma v Dynamo Dresden in the afternoon. All the other games were played in the evening. I can say for certain I watched the Dresden v Roma game. On the basis that there were two games played during the afternoon of 23 November and only one on the afternoon of 7th December, I would say that the 23rd November 1988 was the date in question." No wonder Paul Gauci was not called to give evidence for the prosecution.

## WHAT DID THEY DO WITH THE RAIN?

**T**HERE was further, much more reliable evidence as to the date of the sale. From the outset, Mr Gauci told his interrogators that it was raining on the day of the sale: that the man who bought the clothes noticed it was raining, and had bought an umbrella.

As he left the shop, he opened the umbrella, and walked down the road to pick up a taxi. The question of the incidence of rain on various dates at Sliema preoccupied the trial for many hours.

To start with, there was no doubt, and it was not denied, that there was light rain in Sliema on the evening of Wednesday 23 November, 1988. Major Mifsud, chief meteorologist from Luqa airport, told the court. "0.6 millimetres of rain is not that much so the cloud would not have been that thick, but it did give some rain, yes."

So the early recollection of Paul Gauci and the evidence about the rain both pointed to 23 November as the day the clothes were bought, and this explained the conclusion in the early media reports, especially the *Sunday Times*, that the clothes were bought on 23 November. No doubt this fitted nicely with the police view that the main suspect, the man who bought the clothes, Abu Talb, was in Malta in late November, but not later.

But this evidence was no use at all to the prosecution of Abdelbasset Megrahi, who was certainly not in Malta on 23 November. Was there any other day he was in Malta and could have bought the

clothes? Yes, he was staying in the Holiday Inn in Sliema on 7 December, 1988. So the thrust of the prosecution inquiries about the sale of clothes shifted from 23 November to 7 December. But was it raining on 7 December?

At first glance, it wasn't. The police records for rainfall at Sliema on 7 December showed a complete blank. The prosecution claimed that this was not decisive since the blank referred to the period from noon on the previous day (6 December) to noon on the 7th. So it could still have been raining at the time the clothes were sold – at about 6.30pm on the 7th. But was it? The witness from Luqa, Major Mifsud, who gave evidence on 5 December 2000, was asked:

**Q.** Just confirm with me, please, apart from the trace of rain that we discussed that fell or was measured at 9.00 in the morning of Wednesday December 7, did any rain fall at Luqa?

**A.** No, no rain was recorded. No, no rain was recorded.

**Q.** Up to midnight?

**A.** Up to midnight.

How far is Sliema from Luqa? Mr Mifsud estimated "about five kilometres as the crow flies". Major Mifsud was asked whether it could possibly have been raining at Sliema when it was not raining at Luqa. He replied:

"According to the situation, there was in fact a small ridge of high pressure which was covering the central Mediterranean. Before that the rain we had in the morning was basically due to a depression which was moving north-east over the southern Ionian. And then we had an interval, this ridge of high pressure was coming in, and naturally on the 8th there was another depression, a desert depression, in fact, which came

RAINFALL TOTALS FROM POLICE STATIONS															MONTH DECEMBER		1988					
DATE	BEGHAJSA	B' FORTIA	B' KIRA	CESPICIA	FLORIANA GRG	HAWYI	LUQA MET OFF	MAJNTLOK	MELLIEHA	MEJRAF	MOSKA	MATAR	PAOLA	MERAF	SLEIMA	VALETTA TIR	ZABBAR	ZEBZUG	ZEBTUN	ZEBZEN	TOTALS	
1	0.9	0.7	1.5	5.1	1.0	1.0	0.9	0.3	0.5	1.0	0.5	2.0	0.9	1.5	1.0	0.4	5.1	0.4	0.1	0.6	25.9	
2	7.6	5.0	5.5	4.0	4.3	5.9	8.9	5.5	7.5	6.0	5.5	4.4	4.7	3.5	6.0	4.0	4.0	4.4	5.0	2.0	98.8	
3	1.1	1.0	1.5	3.5	1.3	1.5	Tr	1.0	Tr	1.0	1.5	1.0	2.2	1.0	1.0	-	3.0	1.0	0.3	1.3	22.2	
4	-	1.0	-	-	-	1.4	1.8	0.1	3.5	1.0	2.2	0.7	1.0	Tr	1.4	-	-	Tr	0.4	3.5	17.0	
5	8.6	4.0	5.0	4.4	4.6	3.5	5.8	2.0	5.5	4.5	4.5	5.0	4.5	7.7	4.0	2.5	1.5	0.6	4.0	4.5	88.1	
6				Tr													Tr	Tr			Trace	
7							Tr														Trace	
8	3.4	2.0	3.5	2.0	2.2	4.7	7.3	4.0	8.3	4.5	5.0	4.3	3.0	7.6	3.3	3.5	2.0	5.5	2.0	2.0	79.0	
9	41.0	30.0	32.0	45.1	62.0	50.0	66.0	63.0	65.0	60.0	65.0	68.0	66.0	65.0	80.0	66.0	63.0	63.0	72.0	56.0		1198.3
10	-	4.0	-	-	1.0	1.0	1.3	4.5	1.2	1.0	1.0	1.0	0.6	1.0	3.8	1.2	-	Tr	1.0	4.0		67.5
11	0.7																					0.7
12																						

The police records for rainfall at Sliema in December 1988



*Tony Gauci and his Maltese shop*

out and gave us all the rain on the 8th. We had no rain all right between 6 and 7 at Luqa, so I do not altogether exclude the possibility that there could have been a drop of rain here and there.”

Later, he was more specific: “If you ask for a percentage, if I have to talk about a percentage probability, I would say that 90 per cent there was no rain. And there was always the possibility that there would be some drops of rain, about ten per cent possibility.” The “few drops” rather reluctantly conceded as a 10 per cent possibility by the witness would not have been enough to wet the ground.

The records and expert evidence, therefore, were not absolutely conclusive on this important point, but most of them pointed embarrassingly away from the 7 December as the date the clothes were bought. And 7 December was the only date that they could have been bought by Abdelbasset Megrahi.

## THE MAN WHO WAS TWENTY YEARS TOO YOUNG

**H**OW credible was Gauci’s identification of the accused? As early as September 1989, Gauci had told police the man who bought the clothes was “six foot or more in height” and over 50 years old.

At the time Megrahi, five foot eight inches in height, was 37. We have seen how the first time there was any suggestion of such an identification was on 15 February 1991, as the Gulf War was raging and the US intelligence was sucking up to the Syrians. This was two-

and-a-quarter years after the incident, and poor Mr Gauci had already been shown numerous photographs of so-called suspects, and had even half-identified two of them. Of this occasion (15 February 1991) he said:

“I would say that the photograph at number 8 (Megrahi) is similar to the man who bought the clothing. The hair is perhaps a bit long, the eyebrows are the same, the nose is the same and the chin and the shape of the face are the same. The man in the photograph is in my opinion in his thirties. He would perhaps have to look about ten years or more older, and he would look like the man who bought the clothes. It’s been a long time now and I can only say that this photograph resembles the man who bought the clothing.”

In all the interviews with police on this subject Mr Gauci was quite consistent on two points. The man was about fifty years old and more than six feet tall. During these interviews the police were hoping for an identification of their suspects, Abu Talb and Mohammed Salem, a Palestinian based in Malta. Later in the proceedings, as we have seen, their suspect changed, though the two basic descriptions by Gauci did not change at all. It was only when he came to give evidence that the shopkeeper became vague.

**Q.** What age would you say he was?

**A.** I said before – below six..., under 60. I don’t have experience. I don’t have experience on height or age.

In 1989, he was quite prepared to estimate the height and age of the man, but when he came to the trial he was not so sure about either. No wonder Mr Taylor concluded that Gauci’s evidence about Megrahi was “utterly unreliable”.

It was part of the defence of the two defendants that Libya and Libyans had nothing to do with the Lockerbie bombing, and there were far more likely culprits elsewhere – in the PFLP-GC harboured by Syria and paid for by Iran.

Naturally, the lawyers for Megrahi and Fhimah were anxious that the

judges should have a full picture of the way in which the PFLP-GC were regarded by the investigating police and their governments as first suspects. They had two big chances to develop this information in evidence.

The first was that Abu Talb was brought from his Swedish prison to give evidence for the prosecution. The prosecution called him to establish that he had nothing to do with the bombing, but in the course of his time in the witness box, during all of which he seemed supremely calm and confident as well as politically determined, it emerged, as we have seen, that all the members of a terrorist gang financed by Iran and harboured by Syria were at large in Germany in December 1988, and were making bombs – some of which they disguised in Toshiba cassette recorders in order to pack them in suitcases and smuggle them onto aircraft.

Talb himself was in Malta between 19 and 26 October 1988, and had a ticket that would have got him back to Malta in late November. Talb had stayed in the same Maltese hotel as another Palestinian terrorist called Mohammed Salem, whose brother owned a bakery in Malta that was often used as a base by Palestinian terrorists. Though Talb insisted he had nothing to do with planting the bomb that blew up Pan Am 103, he could well have bought the clothes at Mary’s House. Indeed, when police raided his home in Sweden after the bombing they found other clothes and articles bought in Malta.

This was the evidence piled up against the PFLP-GC, Iran and Syria before the switch of suspects in 1990. And even at the Camp Zeist trial in 2000 and 2001 it still looked much more powerful than the prosecution case against the Libyans.

## THE KHREESAT CONNECTION

**I**T looked even stronger when the defence called Edward Marshman, an FBI agent.

He was sent to Amman in Jordan by the FBI in September 1989 where he interviewed Marwan Khreesat. We have come across Khreesat earlier in the pages of the *Sunday Times* and elsewhere where he was named as the man who was making bombs for the PFLP-GC terrorist gang in Germany.

The *Sunday Times* at that time did not know that Khreesat was an intelligence agent working at one level for his native Jordanian government, and at another for the CIA. These excellent contacts in high places no doubt explain why Khreesat was released so soon after being arrested with a home-made

“Toshiba bomb” in his car in Germany shortly before Lockerbie.

Khreesat was obviously highly relevant to the Camp Zeist trial but his Jordanian bosses (and the Jordanian government) obstinately refused to release him. So Edward Marshman was called to give evidence of what Khreesat had said to him in their interview in the autumn of 1989. What Khreesat told Marshman was reported in the *Eye* (no. 1019, 12 January 2001).

“On 13 October, 1988, two months before the Lockerbie bombing, Khreesat, who had infiltrated the PFLP and was respected in that organisation as an expert with high explosives, travelled from Jordan to Germany with his wife. The couple were met by a PFLP member called Dalkamoni, who told Khreesat he was expecting another PFLP contact called Abu Elias. When Khreesat asked what role Elias would play in the PFLP’s terrorist plot, he was told that Elias was an expert in airport security, while Khreesat was an expert in making bombs.

“The plan was for Khreesat to make bombs and for Elias to smuggle them on to an aircraft. On 22 October Khreesat saw his wife off on a plane back to Jordan – from Frankfurt airport, where he spent some time researching plane schedules. That evening, in a house owned by another PFLP member, Khreesat started making five bombs and disguising them so that they could be put on an aircraft. Khreesat told Marshman that he ‘did not know any of the details as to exactly how the devices were going to be put on board aircraft. Elias had all the details’.

“On 24 October, Khreesat’s story went on, he stopped work for a break. While he was in the shower, Dalkamoni knocked on the door and said he was leaving to go to Frankfurt. When Khreesat got back to his work, he noticed that one of the bombs had disappeared. The next day, 25 October, he phoned his controlling officer in Jordanian intelligence with the news that he had made the bombs and that one of them had been passed on to Elias.

“Later that day, Khreesat and Dalkamoni went to Dusseldorf airport where they wandered around picking up timetables and discussing airline schedules. The next day still, 26 October, Khreesat and Dalkamoni left their home to go to meet Elias. The car, with a bomb inside, was stopped by German police and the two men were arrested. Marshman’s official note of the interview concluded: ‘Khreesat advised that he did not think that he built the device responsible for Pan Am 103, as he only built four devices in Germany, which are described herein.’ ‘Described herein’, however, were not four devices but five, and the missing one was



*Edward Marshman*

disguised as a Toshiba cassette recorder.”

The *Eye* concluded: “Mr Marshman was a witness for the defence and was questioned first by William Taylor QC for Megrahi, the first defendant. Mr Alan Turnbull, for the prosecution, followed with a line of questions designed to prove that Khreesat did not make the bomb that brought down Pan Am 103. But his questions did not even start to shake the main point: that a few weeks before the Lockerbie bombing a gang working ostensibly for Palestinian terrorists, but mostly for various intelligence services, were busily building bombs disguised as cassette recorders and intended for planting on aircraft. Perhaps the most remarkable aspect of Mr Marshman’s evidence was that neither he nor Mr Khreesat ever

once mentioned the Libyan government or Malta airport or anyone employed by either.”

## THE GOBEN MEMORANDUM

**S**OON after Mr Marshman gave evidence, the trial was subject to yet another delay.

The prosecution explained that they had had notice from a foreign government that more information might be available that would be relevant to the trial. The foreign government, it later emerged, was Syria and the information was known as the Goben Memorandum, of which the full text was now in the hands of the government in Damascus.

Goben was the Palestinian “professor”, based in Yugoslavia, who was said to have played a crucial part in the PFLP-GC/Iranian plot to blow up an aircraft in revenge for the Iranian airbus shot from the skies by a gung-ho American sea captain in the Gulf in July 1988. On his death bed, it was rumoured, Goblen had set out the entire “Autumn Leaves” conspiracy. He had since died and, after a few more weeks’ delay to the trial, the Syrian government made it clear that if there was any such memorandum, they had no intention of releasing it.

The end of what had seemed an endless trial came quickly. On the morning of 31 January the judges assembled to deliver two rapid verdicts. Megrahi was guilty of murder, Fhimah not guilty. The verdicts were followed in due course by a written opinion of 90 paragraphs which the judges did not read out. This is a remarkable document that claims an honoured place in the history of British miscarriages of justice.



*Norman McFadyen (right) masterminded the prosecution for the Crown. He joined his fellow prosecutors including Jim Brisbane (left) in triumphalist meetings with the Lockerbie relatives after the trial*

## Chapter Four

## ...AND ERROR

THREE LORDS  
LEAPING TO  
CONCLUSIONS

**I**T deals only in passing with the defence submissions that the PFLP/Autumn Leaves gang may have been responsible for Lockerbie.

"We accept that there is a great deal of suspicion as to the actings of Abu Talb and his circle, but there is no evidence to indicate that they had either the means or the intention to destroy a civil aircraft in December 1988" (para 81). No means, that is, beyond working with a bomb-maker who specialised in disguising explosive devices in cassette recorders so that they could be smuggled on to aircraft. No intention except visits to airports and the studying and hoarding of aircraft schedules, including some from Pan Am.

Where did the bomb suitcase first get on a plane? The judges worked their way carefully through the theory that a bomb suitcase was put on a plane at Luqa airport. The tight security arrangements at Luqa airport, they conceded, "seem to make it extremely difficult for an unaccompanied and unidentified bag to be shipped on a flight out of Luqa. After discussing the evidence of Maltese airport officials that it was impossible or highly unlikely that a bag could be introduced undetected at the check-in

desks or in the baggage area or by approaching the loaders", the judges concluded: "If therefore the unaccompanied bag was launched from Luqa, the method by which that was done is not established by the Crown. The absence of any explanation of the method by which the primary suitcase might have been placed on board KM 180 is a major difficulty for the Crown case" (38).

There was no evidence that an unaccompanied bag went on the plane at Malta – but lo and behold there was, as far as the judges were concerned, plenty of evidence that an unaccompanied bag arrived from Malta at Frankfurt. The judges sailed happily past the defence objections to the accuracy of the documents on this matter. There was, they agreed, some evidence that the suspect bag might have come from a flight from Damascus, and the records did suggest that an unaccompanied bag from Warsaw may have been coded in to the system taking it to Pan Am 103A. There may have been discrepancies in the times and numbers of bags arriving at the relevant coding system, but some of these could be accounted for by figures relating to other flights and "the remaining discrepancy might be accounted for as late arrival luggage which, according to some of the evidence, might not go through the automated system".

What about the x-ray system at Frankfurt? Would that not have caught the Toshiba bomb, especially after the evidence that Kurt Maier, the x-ray operator, was a careful and conscientious worker who had worked out a drill for spotting electronic equipment containing bombs? The judges thought not: "Mr Maier's description of what he looked for does not suggest that he would necessarily have claimed to be able to detect explosives hidden in a radio cassette player" (34). (Note the use of that useful word "necessarily"). All in all, the conclusion was emphatic:

"None of the points made by the defence seems to us to cast doubt on the inference from the documents and other evidence that an unaccompanied bag from KM 180 was transferred to and loaded onto PA 103A". (35)

*What of the case, so carefully presented by Mr Taylor, that the bomb may have gone on to a plane for the first time at Heathrow, London?*

The judges recited the evidence of the loader John Bedford, given to police so soon after the bombing, that, after coming back from a tea break, he discovered a "maroony brown Samsonite" case in the luggage container in which the explosion later occurred. He had not put it there himself. He said his colleague Sulkash Kamboj told him he had put the case there – but Kamboj denied it.

The judges fought their way through



*Arriving for trial in Holland: Lamin Fhimah former official of Libyan Arab Airlines who worked at Luqa airport, Malta*



this contradiction by believing Bedford and not believing Kamboj. But how did they deal with the powerful argument that a brown Samsonite case, of the type in which the explosion actually occurred, was put on the plane at Heathrow in a position extremely close to the place where the bomb eventually went off? This, they reckoned, would have required re-arrangement of the luggage before it was finally loaded. "But if there was such a re-arrangement", they said, "the suitcase described by Mr Bedford might have been placed at some remote corner of the container."

Note again the judicial "might" to provide an explanation for which there was no evidence at all. True, the Samsonite might have come from Malta via Frankfurt. There was no evidence of a Samsonite at either place. But there was evidence of a Samsonite going in curious circumstances onto Pan Am 103 at Heathrow.

Finally, what had the judges to say about the amazing coincidence that a bomb of the type normally made by the PFLP-GC would have been set off by an ice-cube timer, which would have exploded some 38 minutes after take off – and the bomb went off over Lockerbie exactly 38 minutes after take off? So impressed were the judges by this coincidence that they did not refer to it.

They concluded that the Lockerbie bomb was not set off by an ice-cube timer, but by an MST-13 timer. The evidence for this came from the forensic scientists Hayes, Fereday and Thurman. In June 1990 a posse of Scottish detectives had been over to Washington to test Mr Thurman's theory that a fragment found from the Lockerbie debris looked like the circuit board of an MST-13.

The judges noted the various difficulties that had arisen in the finding of the fragment. The overwriting of its label by DC Gilchrist was inexplicable. The policeman's explanation to the court, said the judges, was "at worst evasive and at best confusing" (13). They noted, too, the re-pagination of notes by Dr Hayes from the moment he started to deal with the fragment, but dismissed this as "of no materiality". Not material either, apparently, was the second four-month delay until Mr Fereday sent the fragment to the Scottish police. None of these things worried the judges. "While it is unfortunate," they concluded, "that this particular item which turned out to be of major significance to this enquiry despite its minuscule size may not initially have been given the same meticulous treatment as most other items, we are nevertheless satisfied that the fragment was extracted by Dr Hayes in May 1989 from the remnant of the Slalom shirt found by DC Gilchrist and DC McColm."

The fragment led to the MST-13 which led to Edwin Bollier, whom the judges found a most unsatisfactory witness, prone at best to glaring contradictions and at worst to delusions, fantasy and lies. Nevertheless, the judges concluded, Bollier had sold timers to the Libyan military, had tested some of them in the Libyan desert, and had gone to Libya to sell MST-13 timers shortly before the Lockerbie bombing. Mr Bollier, they noted, had also had business dealings with Abdelbasset Megrabi, the first accused, and had rented his firm an office in Zurich – though there was no evidence that he had met Megrabi on his visit to Libya in December 1988, still less that he conveyed a timer to Megrabi

there. The judges also conceded that Bollier had also sold MST-13 timers to the former East German secret police (the Stasi), but concluded, nevertheless, that the Lockerbie bombing was "of Libyan origin".

The three main witnesses in the trial, the judges concluded, were the grass Giaka, whose evidence they discounted, Bollier the arms salesman, most of whose evidence they discounted, and the only witness they found reliable, Tony Gauci, the Maltese shopkeeper.

Despite the dramatic shifts in Mr Gauci's identification of the man who bought the clothes that ended up in the bomb suitcase, the judges responded warmly to him. They did not see anything significant in the fact that his first identification of Megrabi as the clothes-buyer was in February 1991, more than two years after the bombing – during which time he had seen scores of police photographs and part-identified two Palestinian terrorists.

The judges conceded that the difference between Gauci's original description of the man as six feet tall and 50 years of age and Megrabi's actual height and age (five feet eight inches, 37 years of age) was "a substantial discrepancy" (68). But Gauci's identification was, they concluded, "entirely reliable". In what must have been a novel interpretation of Scottish law, they went further. "There are situations," they said, "where a careful witness who will not commit himself beyond saying that there is a close resemblance can be regarded as more reliable and convincing in his identification than a witness who maintains that his identification is 100 per cent certain" (69).

*Continued page 27*



*Arriving for trial in Holland: Abdelbasset Ali Mohamed Al Megrabi, an official for the Libyan Intelligence Service JSO, who occasionally travelled on a false passport*

## Appendix 2

## THE THREE FORENSIC GENIUSES

**T**HROUGHOUT the Lockerbie controversy, all officialdom agreed that the real geniuses of the piece, the back-room boys who really solved the mystery, were the forensic scientists. The three main geniuses, who crop up again and again in the narrative, were as follows.

## MAKING HAYES

■ Dr Thomas Hayes, of RARDE, the Royal Armament Research and Development Establishment in Kent, part of the Ministry of Defence. During his evidence at Camp Zeist, Dr Hayes had a rather torrid time being cross-examined by Richard Keen QC. Mr Keen started by asking Hayes whether he was still a forensic scientist, and was told no, he was now practising as a chiroprapist. He had changed professions simultaneously with the publication of the report of the inquiry by former judge Sir John May into the Maguire case, one of the more celebrated and disgusting of the infamous English miscarriages of justice.

The Maguires, members of a respectable family in west London whose main crime was that they were Irish, were convicted of handling explosives connected with the IRA.



*The Maguire family: wrongly convicted on bogus forensic evidence from RARDE*

The main evidence against them was forensic – from the top men at RARDE. Sir John May discovered that the scientists at RARDE had deliberately hidden certain facts about the explosive tests they had carried out on the hands of the accused – facts which suggested that if they had been in touch with explosives (which they hadn't) the type of explosive was not normally used by the IRA. This was denounced by Sir John May as

“wholly misleading”. The May report went on: “Another serious admission revealed by the RARDE notebooks was that during the Maguire trial, certain experiments were carried out at RARDE but the results were only partially disclosed. For instance in one case at which the inquiry looked quite closely, a positive finding was recorded and reported to police where the Rf value was as much as 0.12 lower than the standard. Dr Hayes, who has confirmed the results, was unable to give an explanation so long after the event.”

Another infamous case in which RARDE expertise was tested in Hayes's time there was that of Judith Ward. Her wrongful conviction for a murder on a Lancashire motorway was eventually overturned after Judith Ward spent 18 years in prison. In the court of appeal, Lord Justice Glidewell described it as “conviction by ambush”. The Lord Justice embellished this description with a ferocious attack on the senior scientists at RARDE. “The disclosure of scientific evidence was woefully deficient. Three senior RARDE scientists took the law into their own hands and concealed from the prosecution, the defence and the court matters which might have changed the course of the trial.” Asked whether at least two of these scientists were his close colleagues, Dr Hayes agreed, but insisted: “I was unaware and would have been very concerned to know if there was any such, for example, suppression of evidence.”

## FEREDAY'S LORE

■ Dr Hayes's close colleague at the time of the Lockerbie bombing was Allen Fereday, who was singled out for special praise by David Leppard of the *Sunday Times* and other friendly journalists. *Eye* no. 841, 11 March, 1994, referred to another case in which Mr Fereday was involved – that of John Berry who was convicted in 1983 of selling explosives to the Middle East. Mr Berry claimed that he was selling electric timers for civilian purposes, chiefly for airport runway lights. The case against him depended entirely on the evidence of Allen Fereday from RARDE, who told the court: “The timing device was specifically designed and constructed for a

terrorist purpose, that is to say to be attached to an explosive device... I came to the conclusion that it could only be designed and manufactured for a terrorist operation.” The judge was so enchanted by this evidence that he had it transcribed and read it out to the jury. Ten months later the conviction was quashed by the Court of Appeal, and the prosecution appealed to the House of Lords. There, 12 years after Berry was first arrested, it was established that what Fereday told the court was completely wrong. As Lord Taylor pointed out it in his judgement: “Each of the expert witnesses disagreed with the extremely dogmatic conclusion expressed by Mr Fereday in his evidence at the trial. The effect of their evidence was that the timer is indeed a timer and nothing more”. The conviction was quashed and the judges apologised to Mr Berry. Among the disclosures to the court was the remarkable fact that Mr Fereday had no scientific qualifications whatever.

## TOM THE LEGEND

■ FBI forensic expert Tom Thurman was described by *Time* magazine in 1996 as “a legend” for his brilliance in matching a fragment found from the Lockerbie bombing with a timer he linked to Libya. A rather different view of Mr Thurman's expertise was taken by Dr Frederick Whitehurst, one of Thurman's senior predecessors at the FBI. In an internal memorandum highlighted in *Eye* no. 997 (20 September 1996) Whitehurst denounced Thurman for systematic fabrication of evidence in criminal trials. He had, alleged Whitehurst, circumvented established procedures and protocols in the assignment of evidence to examiners... he testified to areas of expertise that he had no qualifications in, therefore fabricating evidence. Though he was formally cleared of the charges in an investigation by the Inspector General of the US Department of Justice in April 1997, Mr Thurman left the FBI soon afterwards.

For reasons which were never made clear, Mr Thurman, whose evidence about the timer was obviously so crucial to the course of the forensic investigation after the Lockerbie bombing, was not called to give evidence at Camp Zeist.



Martin Cadman

On what date were the clothes bought? As we have seen, a crucial factor was the weather. The man who bought the clothes bought an umbrella which he put up against the light rain that was falling. There were two possible dates when Tony Gauci would have been alone in the shop while his brother Paul was watching football: 23 November and 7 December.

"There is no doubt," said the judges, "that the weather on 23 November would be wholly consistent with a light shower between 6.30 and 7.00pm. While Major Mifsud's evidence was clear about the position at Luqa, he did not rule out the possibility of a light shower at Sliema. Mr Gauci's recollection of the weather was that 'it started dripping – not raining heavily' or that there was a 'drizzle' and it only appeared to last for the time that the purchaser was away from the shop to get a taxi."

Then there was the conclusion. "Having carefully considered all the factors relating to this aspect we have reached the conclusion that the date of purchase was Wednesday December 7." Among the factors not very carefully considered was that Major Mifsud had estimated the chances of rain at most at 10 per cent, that there was no rain at all five kilometres away at Luqa. But perhaps the factor most carefully considered was not meteorological at all – that Abdelbasset Megrahi was not even in Malta on 23 November and therefore could not have bought the clothes on that date.

The conclusions followed swiftly. Megrahi, though he was nothing like six feet tall and nowhere near 50, had bought the clothes and an umbrella to

protect him from the rain on a day it most probably was not raining. He was a business associate of Bollier, and had never bought any timers from him. There was no evidence at all that he had made the bomb, packed it in a case and put it on the plane at Malta, but he obviously had.

Paragraph 86 of the judgement starts: "We now turn to the case against the first accused", and quickly makes it clear that any evidence against the second accused, Fhimah, cannot apply to the first. There were then four paragraphs left. The first starts with the observation that on 15 June 1987, eighteen months before Lockerbie, Megrahi was issued with a false passport, which had been used on visits to Nigeria, Ethiopia, Saudi Arabia and Cyprus.

Paragraph 88 deals with the identification of Megrahi by Tony Gauci. "While recognising that this is not an unequivocal identification...it could be inferred (*infer is one of the judges' favourite words*) that the first accused was the person who bought the clothing which surrounded the explosive device." Naturally, "if he was the purchaser of this miscellaneous collection of garments, it is not difficult to infer that he too must have been aware of the purpose for which they were being bought".

Add this to the fact that he was "involved with Mr Bollier, albeit not specifically in connection with MST timers" and had been in Malta on 20th and 21st December 1988, and "it is possible to infer that this visit under a false name the night before the explosive device was planted at Luqa, followed by his departure for Tripoli the following morning at or about the time the device must have been planted, was a visit connected with the planting of the device". That paragraph, perhaps unintentionally, also contained a sound explanation as to why Megrahi had a false passport, "he was a member of the JSO (Libyan intelligence) occupying posts of fairly high rank".



Pam Dix, secretary to UK Families Flight 103

Paragraph 89 opened with a curious disclaimer. "We are aware that in relation to certain aspects of the case there are a number of uncertainties and qualifications. 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."

Quickly abandoning their own precautions about these matters, the judges concluded, unanimously, that the case against Megrahi "does fit into a real and convincing pattern. There is nothing in the evidence which leaves us with any reasonable doubt as to the guilt of the first accused and accordingly we find him guilty".

*There was, however, nothing remotely real or convincing (let alone any kind of pattern) in the case against Megrahi.*

There was no evidence that the bomb went on at Malta, still less any evidence that Megrahi put it there. All the other evidence against him – including the theory that the Lockerbie bomb was set off by an MST-13 timer, the vague nature of the Gauci identification over a period of more than ten years and the date the clothes were bought – were all plagued by precisely the "uncertainties and qualifications" mentioned by the judges. The judges, moreover, under Scottish law had the option of finding the case against Megrahi "not proven" – though in truth the only proper verdict was not guilty.

In these circumstances the judgement and the verdict against Megrahi were perverse. The judges brought shame and disgrace to all those who believed in Scottish justice, and have added to Scottish law an injustice of the type which has often defaced the law in England. Their verdict was a triumph for the CIA, but it did nothing at all to satisfy the demands of the families of those who died at Lockerbie – who still want to know how and why their loved ones were murdered.

In February 1990, a group of British relatives went to the American embassy in London for a meeting with the seven members of the President's commission on aviation security and terrorism. Martin Cadman remembers: "After we'd had our say, the meeting broke up and we moved towards the door. As we got there, I found myself talking to two members of the Commission – I think they were senators. One of them said: 'Your government and our government know exactly what happened at Lockerbie. But they are not going to tell you.'"

Eleven years later, after a prolific waste of many millions of pounds and words, that is still the position.

## Appendix 3

### REPORT ON AND EVALUATION OF THE *LOCKERBIE TRIAL* CONDUCTED BY THE SPECIAL SCOTTISH COURT IN THE NETHERLANDS AT KAMP VAN ZEIST

by **Dr. Hans Köchler, University Professor, international observer of the International Progress Organization nominated by United Nations Secretary-General Kofi Annan on the basis of Security Council resolution 1192 (1998)**

**Santiago de Chile, 3 February 2001/P/HK/17032**

*The undersigned observed the proceedings of the High Court of Judiciary at Camp Zeist (Netherlands) since the beginning on 5 May 2000 until the announcement of the verdict and sentence in the causa Her Majesty's Advocate v Abdelbasset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah on 31 January 2001. He regularly attended the sessions of the Court, repeatedly met with the prosecution and defense teams, interviewed the Registrar and staff members of the Scottish Court Service at Kamp van Zeist, inspected HM Prison Zeist, met with the Governor and Deputy Governor of HM Prison Zeist and with the Chief of the Scottish Police at Kamp van Zeist. He interviewed the two accused Libyan nationals at the beginning of the trial and again – in separate meetings – after the passing of the verdict and sentence on 31 January 2001. All meetings were arranged through the Scottish Court Service. The undersigned further had access to the complete transcripts of the Court's proceedings and exchanged notes with the additional international observer of the International Progress Organization, Mr. Robert Thabit, Esq.*

*On the basis of his first exploratory visit to Kamp van Zeist and of the interview with the two accused, the undersigned, in May 2000, sent a confidential message to the Secretary-General of the United Nations. He made no public comments during the entire period of the trial and did not seek a meeting with the panel of judges, Lord Sutherland, Lord Coulsfield and Lord Maclean. He exercised his observer mission on the basis of respect of the constitutional independence of the judiciary and interpreted his mission – in the absence of any specific description of the tasks of international observers in the respective Security Council resolution – in the sense of evaluating the aspects of due process and fairness of the trial. He reached agreement on the nature of this observer mission with the additional observer of the International Progress Organization, Mr. Robert Thabit.*

Based on his observations during the entire period of the trial and on the information obtained in the numerous meetings with the protagonists of the trial mentioned above, the undersigned presents the following evaluation in regard to the aspect of due process and the question of the fairness of the trial:

1. All administrative aspects of the trial were handled with great care, efficiency and professionalism by the staff of the Scottish Court Service at Kamp van Zeist. Apart from minor problems with simultaneous interpretation at the beginning of the trial, there were no major weaknesses that might have affected the fairness of the proceedings. The problems of interpretation were solved in a satisfactory manner. The Scottish Court Service did its best to assist the undersigned in the accomplishment of his observer mission.

2. The circumstances of detention of the two accused at Her Majesty's Prison Zeist were in conformity with national legal requirements and international legal and human rights standards. According to the information given by the accused in a private interview with the undersigned, no people had access to them without their consent. In particular, the medical services and the medical care for the second accused (who needs permanent medication) were up to the required standard. Upon their special request, the undersigned sent a note about his meeting with the accused in May 2000 and conveyed their concerns in regard to certain political aspects of the United Nations arrangements and conditions for their coming to the Netherlands to the Secretary-General of the United Nations. The Governor of HM Prison Zeist forwarded the undersigned's confirmation note on the forwarding of this message to the two accused. The prison administration was fully co-operative in regard to the undersigned's requests in the exercise of his observer mission.

3. The extraordinary length of detention of the two suspects / accused from the time of their arrival in the Netherlands until the beginning of the trial in May 2000 has constituted a serious problem in regard to the basic human rights of the two Libyan nationals under general European standards, in particular those of the European Convention on Human Rights. In general, the highly political circumstances of the trial and special security considerations related to the political nature of the trial may have had a detrimental effect on the rights of the accused, in particular in regard to the duration of administrative detention.

4. As far as the material aspects of due process and fairness of the trial are concerned, the presence of at least two representatives of a foreign government in the courtroom during the entire period of the trial was highly problematic. The two state prosecutors from the US Department of Justice were seated next to the prosecution team. They were not listed in any of the official information documents about the Court's officers produced by the Scottish Court Service, yet they were seen talking to the prosecutors while the Court was in session, checking notes and passing on documents. For an independent observer watching this from the visitors' gallery, this created the impression of "supervisors" handling vital matters of the prosecution strategy and deciding, in certain cases, which documents (evidence) were to be released in open court or what parts of information contained in a certain document were to be withheld (deleted).

5. This serious problem of due process became evident in the matter of the CIA cables concerning one of the Crown's key witnesses, Mr. Giaka. Those cables were initially dismissed by the prosecution as "not relevant," but proved to be of high relevance when

finally (though only partially) released after a move from the part of the defense. Apart from this specific aspect – that seriously damaged the integrity of the whole legal procedure –, it has become obvious that the presence of representatives of foreign governments in a Scottish courtroom (or any courtroom, for that matter) on the side of the prosecution team jeopardizes the independence and integrity of legal procedures and is not in conformity with the general standards of due process and fairness of the trial. As has become obvious to the undersigned, this presence has negatively impacted on the Court's ability to find the truth; it has introduced a political element into the proceedings in the courtroom. This presence should never have been granted from the outset.

6. Another, though less serious, problem in regard to due process was the presence of foreign nationals on the side of the defense team in the courtroom during the whole period of the trial. Apart from the presence of an Arab interpreter (which was perfectly reasonable under aspects of fairness and efficiency of the proceedings), the presence of a Libyan lawyer who had held high posts in the Libyan government and who represented the Libyan Jamahiriya in its case v the United States and the United Kingdom at the International Court of Justice gave the trial a political aspect that should have been avoided by decision of the panel of judges. Though Mr. Maghour acted officially as Libyan defense lawyer for the accused Libyan nationals and although he was not seen by the undersigned as interacting with the Scottish defense lawyers during court proceedings, he had to be perceived as a kind of liaison official in a political sense. It has to be noted that the original Libyan defense lawyer, Dr. Ibrahim Legwell (chosen by the two suspects long before their transfer to the Netherlands), resigned under protest when the Libyan government introduced Mr. Maghour as new defense lawyer for the two accused. In sum, the presence of *de facto* governmental representatives of both sides in the courtroom gave the trial a highly political aura that should have been avoided by all means, at least as far as the actual proceedings in the courtroom were concerned. Again, as to the undersigned's knowledge, the presence of foreign nationals on the side of the defense team was mentioned in no official briefing document of the Scottish Court Service.

7. It was a consistent pattern during the whole trial that – as an apparent result of political interests and considerations – efforts were undertaken to withhold substantial information from the Court. One of the most obvious cases in point was that of the former Libyan double agent, Abdul Majid Giaka, and the CIA cables related to him. Some of the cables were finally released after much insistence from the part of the defense, some were never made available. The Court was apparently content with this situation, which is hard to understand for an independent observer. It may never be fully known up to which extent relevant information was hidden from the Court. The most serious case, however, is related to the special defense launched by defense attorneys Taylor and Keen. It was officially stated by the Lord Advocate that substantial new information had been received from an unnamed foreign government relating to the defense case. The content of this information was never revealed, the requested specific documents were never provided by a foreign government. The alternative theory of the

defense – leading to conclusions contradictory to those of the prosecution – was never seriously investigated. Amid shrouds of secrecy and “national security” considerations, that avenue was never seriously pursued – although it was officially declared as being of major importance for the defense case. This is totally incomprehensible to any rational observer. By not having pursued thoroughly and carefully an alternative theory, the Court seems to have accepted that the whole legal process was seriously flawed in regard to the requirements of objectivity and due process.

8. As a result of this situation, the undersigned has reached the conclusion that foreign governments or (secret) governmental agencies may have been allowed, albeit indirectly, to determine, to a considerable extent, which evidence was made available to the Court.

9. In the analysis of the undersigned, the strategy of the defense team by suddenly dropping its “special defense” and cancelling the appearance of almost all defense witnesses (in spite of the defense's ambitious announcements made earlier during the trial) is totally incomprehensible; it puts into question the credibility of the defense's actions and motives. In spite of repeated requests of the undersigned, the defense lawyers were not available for comment on this particular matter.

10. A general pattern of the trial consisted in the fact that virtually all people presented by the prosecution as key witnesses were proven to lack credibility to a very high extent, in certain cases even having openly lied to the Court. Particularly as regards Mr. Bollier and Mr. Giaka, there were so many inconsistencies in their statements and open contradictions to statements of other witnesses that the resulting confusion was much greater than any clarification that may have been obtained from parts of their statements. Their credibility as such was shaken. It seems highly arbitrary and irrational to choose only parts of their statements for the formulation of a verdict that requires certainty “beyond any reasonable doubt.”

11. The air of international power politics is present in the whole verdict of the panel of judges. In spite of the many reservations in the Opinion of the Court explaining the verdict itself, the guilty verdict in the case of the first accused is particularly incomprehensible in view of the admission by the judges themselves that the identification of the first accused by the Maltese shop owner was “not absolute” (formulation in Par. 89 of the Opinion) and that there was a “mass of conflicting evidence” (*ibid.*). The consistency and legal credibility of the verdict is further jeopardized by the fact that the judges deleted one of the basic elements of the indictment, namely the statement about the two accused having induced on 20 December 1988 into Malta airport the suitcase that was supposedly used to hide the bomb that exploded in the Pan Am jet.

12. Furthermore, the Opinion of the Court seems to be inconsistent in a basic respect: while the first accused was found “guilty”, the second accused was found “not guilty”. It is to be noted that the judgement, in the latter's case, was not “not proven”, but “not guilty”. This is totally incomprehensible for any

rational observer when one considers that the indictment in its very essence was based on the joint action of the two accused in Malta.

13. The Opinion of the Court is exclusively based on circumstantial evidence and on a series of highly problematic inferences. As to the undersigned's knowledge, there is not one single piece of material evidence linking the two accused to the crime. In such a context, the guilty verdict in regard to the first accused appears to be arbitrary, even irrational. This impression is enforced when one considers that the actual wording of the larger part of the Opinion of the Court points more into the direction of a "not proven" verdict. The arbitrary aspect of the verdict is becoming even more obvious when one considers that the prosecution, at a rather late stage of the trial, decided to "split" the accusation and to change the very essence of the indictment by renouncing the identification of the second accused as a member of Libyan intelligence so as to actually disengage him from the formerly alleged collusion with the first accused in the supposed perpetration of the crime. Some light is shed on this procedure by the otherwise totally incomprehensible "not guilty" verdict in regard to the second accused.

14. This leads the undersigned to the suspicion that political considerations may have been overriding a strictly judicial evaluation of the case and thus may have adversely affected the outcome of the trial. This may have a profound impact on the evaluation of the professional reputation and integrity of the panel of three Scottish judges. Seen from the final outcome, a certain coordination of the strategies of the prosecution, of the defense, and of the judges' considerations during the later period of the trial is not totally unlikely. This, however, – when actually proven – would have a devastating effect on the whole legal process of the Scottish Court in the Netherlands and on the legal quality of its findings.

15. In the above context, the undersigned has reached the general conclusion that the outcome of the trial may well have been determined by political considerations and may to a considerable extent have been the result of more or less openly exercised influence from the part of actors outside the judicial framework – facts which are not compatible with the basic principle of the division of powers and with the independence of the judiciary, and which put in jeopardy the very rule of law and the confidence citizens must have in the legitimacy of state power and the functioning of the state's organs – whether on the traditional national level or in the framework of international justice as it is gradually being established through the United Nations Organization.

16. On the basis of the above observations and evaluation, the undersigned has – to his great dismay – reached the conclusion that the trial, seen in its entirety, was not fair and was not conducted in an objective manner. Indeed, there are many more questions and doubts at the end of the trial than there were at its beginning. The trial has effectively created more confusion than clarity and no rational observer can make any statement on the complex subject matter "beyond any reasonable doubt". Irrespective of this regrettable outcome, the search for the truth must continue. This is the requirement of the rule of law

and the right of the victims' families and of the international public.

17. The international observer may draw one general conclusion from the conduct of the trial, which allows to formulate a general maxim applicable to judicial procedures in general: proper judicial procedure is simply impossible if political interests and intelligence services – from whichever side – succeed in interfering in the actual conduct of a court. We should remember the wisdom of Immanuel Kant who – in his treatise on eternal peace (*Zum ewigen Frieden*), elaborating on the essence of the rule of law – unambiguously stated that secrecy is never compatible with a republican system determined by the rule of law. The purpose of intelligence services – from whichever side – lies in secret action and deception, not in the search for truth. Justice and the rule of law can never be achieved without transparency.

18. Regrettably, through the conduct of the Court, disservice has been done to the important cause of international criminal justice. The goals of criminal justice on an international level cannot be advanced in a context of power politics and in the absence of an elaborate division of powers. What is true on the national level, applies to the transnational level as well. No national court can function if it has to act under pressure from the executive power and if vital evidence is being withheld from it because of political interests. The realities faced by the Scottish Court in the Netherlands have demonstrated this truth in a very clear and dramatic fashion – the political impact stemming, in this particular case, from a highly complex web of national and transnational interests related to the interaction among several major actors on the international scene.

19. The undersigned would like to express his humble opinion – or hope, for that matter – that an appeal, if granted, will correct the deficiencies of the trial as explained above. It goes without saying that all will depend on the integrity and independence of the five judges of an eventual Court of Appeal operating under Scottish law.

20. The above evaluation should in no way be interpreted as to diminish the idealistic contribution and commitment of so many civil servants of the Scottish Court Service and the Scottish police authorities who guaranteed the smooth functioning of the whole court operation at Kamp van Zeist under difficult and truly extraordinary circumstances.

*The undersigned would like to emphasize that the above remarks constitute a personal evaluation by himself alone and that he is only bound by the dictates of his conscience; as an international citizen committed to the goals and principles of the United Nations Charter, he does not accept any pressure or influence from the part of any government, political party or interest group.*

*Truth in a matter of criminal justice has to be found through a transparent inquiry that will only be possible if all considerations of power politics are put aside. The rule of law is not compatible with the rules of power politics; justice cannot be done unless in complete independence, based on reason and the unequivocal commitment to basic human rights.*

**Dr. Hans Köchler**

# LEST THEY FORGET



*The Dean of Westminster, Duke of York, Prime Minister Tony Blair and Deputy Prime Minister John Prescott at Westminster Abbey for a Remembrance service on the 10th anniversary of the Lockerbie disaster*

## COUNTDOWN TO A WHITEWASH

- 1988 21 December.** Pan Am Jumbo jet flight 103 bombed over Lockerbie. 259 crew and passengers and eleven on the ground killed.
- 1989 February.** Forensic investigations show that the bomb went off in a Samsonite suitcase in the hold of the plane. In the case were clothes bought in a shop in Sliema, Malta.
- 1989 March.** Transport Minister Paul Channon tells journalists at the Garrick Club that police have found the terrorists responsible for the bombing and arrests are imminent.
- 1989 March.** President Bush rings Prime Minister Thatcher with suggestions to "low key" inquiries into Lockerbie.
- 1989 September.** Scottish police interview Maltese shopkeeper Tony Gauci for the first time. Show him pictures of Palestinian terrorists.
- 1989 October.** Sunday Times starts long series of articles identifying the Palestinian PFLP-GC as the organisation responsible for the bombing.
- 1989 December.** Prime Minister Thatcher turns down demands for a public inquiry into Lockerbie.
- 1990 February.** American Presidential Commission on Aviation Security and Terrorism reports. Includes several references to PFLP-GC.
- 1990 July.** FBI agent Tom Thurman invites Scottish police to Washington. Shows them MST-13 timers, and suggests similarities with fragment found from Lockerbie debris.
- 1990 2 August.** Iraq invades Kuwait. UN forces start to gather in Saudi Arabia in combined operation against Iraq known as Desert Storm..
- 1990 September.** First reports in western media, notably *L'Express*, naming Libya as possible suspects for Lockerbie bombing.
- 1990 October.** Fatal accident inquiry into Lockerbie starts in Scotland. No inquiry or conclusion into who was responsible for the bombing.
- 1990 November.** Syria removed from US list of countries harbouring terrorists. Syrian forces join Desert Storm. Libya first named in British media as possible suspect for bombing.
- 1991 January.** Desert Storm bombing of Iraq begins.
- 1991 February.** Maltese shopkeeper Tony Gauci first shown photograph of Abdelbasset Megrahi, a Libyan intelligence agent, and half-identifies him as the purchaser of clothes in his shop.
- 1991 July.** CIA informer, garage mechanic and Libyan airline manager Majid Giaka, taken off Malta in a US warship and interviewed by FBI agent.
- 1991 October.** Giaka gives evidence at a US Grand Jury.
- 1991 November.** US indictments name Megrahi and Libyan airline manager Lamin Fhimah as Lockerbie conspirators and murderers. Scottish legal authorities follow suit.
- 1992 January.** UN imposes sanctions on Libya until the two suspects are released.
- 1992-1998** Stalemate as Libya refuses to release suspects.
- 1998-early 1999** Negotiations inspired by South African President Nelson Mandela.
- 1999 April.** Suspects give themselves up for trial under Scottish law in a special trial in Holland.
- 2000 May.** Trial opens under three Scottish judges (and no jury) at Camp Zeist in Holland.
- 2001 January.** Megrahi convicted of murder, Fhimah acquitted.

### Thanks

Pamela Dix, who lost her brother at Lockerbie, Martin and Rita Cadman who lost their son, Jim and Jane Swire who lost their daughter, as did John and Lisa Mosey, have all helped the *Eye* with this story over the last twelve years. Others who have helped with this story include Tam Dalyell MP, Professor Robert Black, John Ashton, Anthony Sampson and Margaret Renn. Few if any of these people will agree with the style or conclusions here, which makes their help all the more invaluable.

# footnotes

## LOCKERBIE: The Firing of Dr Fieldhouse

ONE OF the unsung heroes of the 1988 Lockerbie disaster, in which a Pan-Am airliner crashed killing 268 people, was Dr David Fieldhouse, the senior pathologist at the Fieldhouse in West Yorkshire.

Immediately after the inquiry into the Scottish Office), Fieldhouse's reputation was questioned by the 59 labels he had left the body? The

## LOCKERBIE: New Mystery of the Red Tarpaulin

A MYSTERIOUS and anonymous note about the chaotic aftermath of the 1988 bombing of an airliner over Lockerbie.

we would go back to the school at compare notes



## Lockerbie: Another warning, another denial

THE great cover-up of the biggest mass murder in British history, the 1988 bombing of Pan Am 103 at Lockerbie, has been given a new boost by the prime minister.

Police arrest a gang from the PFLP-GC, a Palestinian terrorist organisation opposed to the PLO and closely linked to Iran. In one of the gang's cars was a bomb built into a Toshiba radio-cassette player which was specifically designed to blow up aircraft.

Department

2.1

the time? NO REPLY. Q: If so, was this information passed to government departments, civil servants and/or ministers? NO REPLY.

## LOCKERBIE: CAMPBELL'S SOUP

HOW goes the trial in Holland of the two Libyan intelligence agents accused of bombing Pan-am airliner 103 over Lockerbie in December 1988? The show trial until 8

## Deaf Leppard

HERE'S A little tale about Sunday Times editor John Witherow and reporter

## LOCKERBIE:

## Another fit up

JUVAL AVIV is an inquiry agent who was hired by Pan Am to investigate the 1988 bombing of its airliner over Lockerbie.

In his report Aviv suggested that the bomb had got on to the plane in a bag which avoided inspection because it was thought by officials to be



## TIME Warp

The special issue of the US magazine Time on the mysterious recent TWA airliner disaster carried a breathtaking puff for Tom Cruise who is leading the

## A helpful letter from MI5

ON 14 JUNE, UK Families Flight 103, a group of relatives and friends of the victims of the 1988

## LOCKERBIE LIES (contd.)

LYING about Lockerbie, a favourite sport of ministers ever since Pan Am flight 103 was blown out of the sky has been

1989, not 1990. 2) Parkinson promised a delegation of bereaved relatives that he would do his best to secure a full-scale inquiry under a high court judge who would

nor into the unlikely notion, popularised by intelligence officers on both sides of the Atlantic and their friendly media, that the bomb started its plan journey in Malta.

4) Major knows perfectly well that the relatives certainly did not "accept" the case against the two Libyans in December

## footnotes LOCKERBIE

## How the Leppard changed his spots

ASTONISHING new information before the bombing" Leppard had been two as Both been govern-

## Lockerbie: STEWART'S ENQUIRY

THE LEADERS of New Labour have turned down an opportunity to defeat the government in the House of Commons on a momentous issue: the 1988 Lockerbie bombing.

earlier. He had not been arrested or cautioned.

On 9 April Stewart, accompanied by Tufail Shaheen MBE, president of the Islamic Council of Scotland, went to Libya. He had a long interview with President Gaddafi. Stewart tells the Eye: "Gaddafi had obviously thought about it very carefully and was very

the air in Edinburgh? Where did McFall get his legal advice? One likely adviser is Andrew Hardie QC, hotly tipped as lord advocate in the next Labour government. Hardie was number two in the government team at the 1990 fatal accident inquiry into the Lockerbie disaster. In the event, Tam Dalyell was

## Lockerbie: Pik 'n' Miss

LOOMING over the prospect of the trial of two Libyan suspects for the Lockerbie bombing are two dreadful questions which haunt the intelligence communities on both sides of the Atlantic.



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