

LOCKERBIE

Fact and Fiction



“I read the booklet with interest. It is good to be able to read the facts in an unbiased way.”

“This piece is absolutely superb. Utterly brilliant!”

“Clear as a bell, and persuasive that the conviction of Megrahi was profoundly unsafe.”

“This overview is very valuable.”

Overview of the Lockerbie case

Fact and Fiction

What happened?

Maid of the Seas, Pan Am 103, left the gate at Heathrow airport on time at 18.07 on the evening of 21st December 1988, taking off at 18.25. The aircraft was loaded from empty at Heathrow, however 49 passengers and their luggage were transferred from a feeder flight (Pan Am 103A) which had left Frankfurt at 16.50 local time. *Maid of the Seas* was due to land at John F. Kennedy airport, New York, at 01.40 GMT. She fell out of the sky at 19.03 over southern Scotland, with the fuel-laden wings causing carnage in the small town of Lockerbie when they landed on occupied houses. In total, 270 people lost their lives. It was soon established that the cause of the crash was an explosion in the baggage container that had held the luggage transferred from the Frankfurt flight.

What was Abdelbaset al-Megrahi supposed to have done?

The court decided that he was a senior Libyan security officer who had bought a selection of clothes in a small shop in Sliema, Malta, only three miles from Luqa airport. Fragments of clothes from that shop were recovered from the crash scene, and the shopkeeper (Tony Gauci) remembered the sale. Megrahi then (allegedly) smuggled a suitcase containing these clothes and a Semtex bomb disguised in a radio-cassette recorder on to Air Malta flight KM180, which left Luqa at 09.45 local time on 21st December, for Frankfurt. The suitcase was said to be unaccompanied, and to carry Air Malta tags directing it to be transferred at Frankfurt to PA103A, and then at Heathrow to PA103. He was alleged to have used an electronic countdown timer set to detonate the bomb after the transatlantic leg had left Heathrow.

What was the evidence for this?

Evidence against Megrahi fell under a number of headings.

1. A member of the Libyan security services who had turned CIA informer identified him as a senior security operative.
2. Tony Gauci identified him as 'resembling' the man who bought the clothes in his shop.

3. He was shown to have been at Luqa airport at the time KM180 departed, travelling on a false passport.
4. Baggage transfer records at Frankfurt showed evidence of an item of luggage being transferred from KM180 to PA103A, even though no passenger from the Malta flight was booked on the Heathrow flight, and all the passengers collected their luggage at their destinations with nothing going astray.
5. A small piece of printed circuit board found embedded in a scrap of the Maltese clothes was identified as a part of a countdown timer made by a Swiss firm which Megrahi had had business dealings with. This timer was part of a special order of only 20 items supplied exclusively to Libya.

The difficulty with this is firstly that each of these points fails to stand up to serious scrutiny, and secondly that far more robust evidence exists for both a different *modus operandi* and a different set of perpetrators.

1. Membership of the Libyan security services

The CIA informant, Majid Giaka, was originally the Crown's star witness. Without his evidence, the indictments against Megrahi and his colleague Lamin Fhimah (who was acquitted) could not have been issued in the first place. However, CIA cables revealed during the trial exposed Giaka as a fantasist who was inventing 'intelligence' for favours and money from the CIA. The judges discounted all his evidence except for his statement that Megrahi was a member of the Libyan security forces. No other evidence for this was produced, and Megrahi has consistently denied the allegation. No evidence has ever emerged linking Megrahi to any other terrorist atrocities or human rights abuses of the Gaddafi regime, or to refute his claim that he was merely an airline employee who was also moonlighting as an entrepreneur businessman.

2. The identification evidence

Tony Gauci was first interviewed about the sale of the clothes on 1st September 1989, nine months after the event. He described the purchaser as Libyan, aged about 50, over six feet tall, heavily built and dark-skinned. A photofit and an artist's impression produced at the time suggest the man may have been negro or mixed race. Megrahi is 5 feet 8 inches tall, light-skinned, of medium build, and was 36 at the time of the purchase. Gauci

was unsure of the date, but this was narrowed down to either 23rd November or 7th December 1988 on the basis of televised football games. Gauci stated that the Christmas lights were not yet lit, and it was raining when the customer left the shop.

On 15th February 1991 (well over two years after the purchase) Gauci was shown a police photospread including a picture of Megrahi. He initially rejected all the men as being 'too young', but when urged to reconsider he chose Megrahi's picture as the one that looked most like the customer. However, all the policemen present knew which picture was the suspect's, a recognised confounder in such exercises and something now banned, and Megrahi's picture stood out as being noticeably different from the others in both size and quality. As a further confounder the passport photo reproduction used was such a poor likeness of Megrahi as to be essentially unrecognisable. It did, however, look a bit like the photofit Gauci had produced in 1989. (See a more detailed discussion of these points at www.vetpath.co.uk/lockergie/photoid.pdf)

By the time of the live identity parade in April 1999, better likenesses identifying Megrahi as the 'Lockerbie bomber' had appeared in many publications, which Gauci is known to have seen. (So widespread had been the publicity that most people following the case could probably have picked the accused out without ever having met him.) Megrahi was by then 47, close to the age the purchaser was said to be in 1988. The 'foils' in the parade were nearly all much younger (and bore little resemblance to Megrahi), even though by Gauci's original estimate the purchaser would by then have been in his early sixties. Megrahi in the flesh looked nothing like the images Gauci had produced for the police in 1989, or the blurry passport photo he picked out in 1991. Nevertheless, Gauci once again fingered him as 'resembling' the purchaser.

The date of the purchase was important, as Megrahi was in Malta on 7th December (using his own passport), but there is no evidence he was there on 23rd November. Meteorological records demonstrated that there was light rain in Sliema at the relevant time on 23rd November, but not on 7th December. The Christmas lights were eventually found to have been switched on on 6th December.

In late 1998 a magazine article was published with a recognisable photograph of Megrahi, together with a list of all the discrepancies between Gauci's original description of the purchaser and date, and the case against Megrahi. Gauci had a copy which was only taken from him four days before the identity parade. When he gave evidence, he consistently backtracked on his original statements regarding height, build, age, Christmas lights and rain, always to favour the prosecution case. Tony Gauci's brother Paul, who was later rewarded for "maintaining the resolve of his brother", had long expressed interest in a reward for the family's input, and after Megrahi was convicted the brothers were paid an alleged \$3 million by the US Department of Justice 'Rewards for Justice' programme.

3. Presence at Luqa airport

Megrahi was at Luqa airport on the morning of the disaster, using a passport in the name of 'Abdusamad'. However, all he did was catch his flight for Tripoli, without going airside, and without checking in any hold luggage. He was never shown to have had any opportunity to place the bomb suitcase on board KM180 - originally Fhimah was supposed to have done that, but Fhimah could not even be shown to have been at the airport that morning. The 'false' passport was a legal one, issued to Megrahi to allow him to conceal his airline employment while negotiating business deals to circumvent the sanctions then in force against Libya, and which he occasionally used for personal travel. Although Megrahi used it for that trip, he had business meetings in Malta using his own name, and stayed at a hotel where he was well known. Not only was no other accomplice identified, security at Luqa airport was unusually tight in 1988, and baggage records provided strong evidence that there was no unaccompanied luggage on flight KM180. Despite intensive and intrusive investigation lasting many months, no plausible mechanism whereby the bomb suitcase could have been loaded was ever identified, and no trace of the bomb was found on the island.

4. Baggage transfer at Frankfurt

The only evidence for an unaccompanied suitcase coming from Malta was a single line of code in a printout taken from the Frankfurt airport automated baggage system, which surfaced in August 1989. However, that

system was far from transparent, and a number of guesses and assumptions were necessary to conclude that something *might* have been transferred from KM180 to PA103A. In the end, *two* items apparently loaded on to the Heathrow flight could not be identified, one seeming to have come from Malta and one from Warsaw. The coincidence of the Maltese clothes caused the investigators to become convinced the former item was the bomb, and this was never reconsidered despite the failure to find any way the bomb could have been put on board at Luqa. The item linked to the Warsaw flight was never investigated.

5. The timer fragment

This is the most notorious item in the Lockerbie case. Originally the investigators believed the bomb to have been triggered by an altimeter device, operating on air pressure, and designed not to explode until the device was airborne (see the PFLP-GC, below). This introduced problems in respect of a Frankfurt introduction, as such a device should have exploded over France. A hypothesis was developed that the altimeter had malfunctioned on the feeder flight, only to detonate after the second take-off. When the focus of the investigation switched to Malta and a *third* flight, this introduced a paradox that was not addressed for over a year, until the identification of this fragment as part of a countdown timer resolved the difficulty.

The MST-13 timer was said to be one of a special run of only 20 supplied exclusively to Libya by the Swiss firm MEBO. Megrahi had business dealings with that firm, but not relating to, or at the time of, the purchase of the timers. Nevertheless this was said to be the 'golden thread' linking him to the bomb. This item had extraordinarily irregular provenance within the forensic investigation, with paperwork anomalies leading many commentators to suspect its appearance in the chain of evidence had been back-dated. In addition, the Libyan provenance was less certain than claimed, with Lockerbie occurring over two years after the timers were supplied, and examples having been found in other parts of Africa.

Irrespective of who had bombed the plane, the countdown timer introduced another paradox. *Maid of the Seas* exploded only 38 minutes after her wheels left the tarmac, and the plane was not late. There was a 7-hour

flight ahead of her, with a thousand miles of Atlantic ocean where incriminating clothes and PCB fragments could have been buried forever. An altimeter timer would inevitably have exploded around 40 minutes into the flight, regardless of take-off time. Using a countdown timer set so early in the flight time carried a huge risk that the explosion would have occurred harmlessly on the tarmac if the plane had missed its slot at Heathrow - as could easily have happened on a stormy winter evening.

It was only in February 2012 that metallurgical evidence concealed from the original trial was revealed, which showed that the fragment could not have been one of the 20 items MEBO had supplied to Libya. This discovery calls into question whether the PCB chip was even part of a countdown timer, rather than some other electronic component using the same basic template.

Evidence for a Heathrow introduction

Although *Maid of the Seas* was loaded from empty at Heathrow, a press release issued on 30th December 1988 announced that the bomb had almost certainly not been introduced there, apparently because the location of the explosion had been traced to the baggage container holding the Frankfurt luggage. However, that container already held a number of suitcases before the Frankfurt items were added, and had been unattended in Terminal 3 for some time during the afternoon.

Baggage handler John Bedford was interviewed on 3rd January 1989, and told a strange story. He had left the container with a few suitcases already inside, while he took a tea break. When he returned (this was still an hour before the feeder flight landed), he noticed two more cases had been added. He described the left-hand one, which was only a few inches from the position of the explosion, as “a maroony-brown hardshell, the kind Samsonite make”. It was not until several weeks later that forensic analysis identified the bomb suitcase as a Samsonite hardshell in ‘antique copper’, variously described by investigators as brown, bronze, maroon and even burgundy. It was known that security at Heathrow was very lax, with many airside passes unaccounted-for. However, there is no evidence the police seriously investigated the possibility that the suitcase Bedford saw was the bomb bag.

Reasons why this suitcase was not the bomb varied during the inquiry. Originally (at the 1991 Fatal Accident Inquiry) it was assumed absolutely that the case could not have been moved at all, thus as the explosion had occurred a few inches outside its last recorded position, it was innocent. Later (at Camp Zeist) this was reversed, and a suitcase from Frankfurt was placed in the position the Bedford case had originally occupied. One might think this obviously allowed for the possibility, even probability, that the Bedford case, replaced on top of this Frankfurt item, was indeed the bomb. Especially as no innocent suitcase recovered on the ground was ever matched to the one Bedford described. Nevertheless the prosecution insisted that the tenuous trail of the Frankfurt baggage printout was the one to follow, rather than the only brown Samsonite suitcase actually seen by any witness.

It was only after Megrahi had been convicted that another witness came forward to testify that there had been a break-in into that very area of the Heathrow airside, the night before the disaster. This had been reported at the time, but not acted on. Clearly, this could have been the way the suitcase was taken airside, to allow the terrorist to enter the next day, apparently empty-handed. It was not until 2007 that it was realised that one witness whose evidence had been crucial both at the FAI and the civil actions against Pan Am in the USA in the early 1990s had not been called at Camp Zeist. DC Derek Henderson had conducted reconciliations on the baggage carried by passengers on PA103, and concluded that none of them had checked in a brown-ish Samsonite. This was considered crucial in proving that the bomb had not been planted in a passenger's luggage. However, it also proved that the suitcase Bedford saw was not legitimate passenger baggage. Lacking his evidence, the Zeist judges were able to decide that Bedford's case belonged to a passenger, and had simply vanished over Lockerbie.

The Popular Front for the Liberation of Palestine

- General Command

The saga of the Frankfurt cell of this terrorist group, its murderous members, their shocking past form in blowing up airliners, their possession of explosives, radio-cassette recorders and altimeter-type timers, and their

serious intent to blow up an airliner in autumn 1988, has been well rehearsed elsewhere. There is evidence to suggest they were sponsored by Iran to take revenge for the US shooting down of the Iranian airbus flight IR655 over the Straits of Hormuz in July 1988, which killed 290 people (including 66 children), mostly pilgrims on their way to Mecca. What there was not, was any evidence to link this group to the actual placing of a device on Pan Am 103. Whether this is because the investigators spent all their time and effort investigating the feeder flight, and latterly concentrating exclusively on Malta, and neglected to investigate Heathrow as a possible point of origin, cannot be known.

The reasoning of the Zeist court

The trial at Camp Zeist took place nine years after the indictments were issued against Megrahi and Fhimah. Nine years of international publicity and condemnation, of house arrest for the suspects, and punitive sanctions imposed on Libya, which was assumed to be guilty. It is difficult to see how the presumption of innocence could be maintained in this context. The reasoning of the judges has been subject to much criticism as being perverse; “inference piled upon supposition”. At almost every turn a less probable explanation that implied guilt was preferred to a more probable explanation that implied innocence.

The rationale of the judgement has been variously described as circular reasoning, *petitio principii* and begging the question. First, the judges decided for no readily apparent reason that the date of the clothes purchase was 7th December, despite the evidence of the rainfall records. Then, they decided that although Gauci’s identification of Megrahi was ‘not absolute’, the fact that Megrahi had been in Malta on the day of the purchase, and had been at the airport at the time they had decided the bomb was invisibly levitated on board KM180, and knew the manufacturer of the timing devices, showed that he was indeed the purchaser beyond reasonable doubt. Then, when turning to the extraordinarily tenuous evidence at Frankfurt, the possibility that the entry being relied on was a mere coding anomaly was rejected on the grounds that the man they had decided had bought the clothes in the suitcase was at the airport when the flight in question had left.

Although Giaka was acknowledged as a lying fantasist his assertion that Megrahi was a senior security operative was accepted, and the 'coded' Abdusamad passport judged to be highly incriminating. Megrahi having lied to a journalist in a panicked interview shortly after being indicted was also held against him. The extensive terrorist record of the PFLP-GC members was brushed aside in favour of blaming a man who had no such history, and their possession of radio-cassette bombs designed to attack aircraft ignored in favour of an imaginary device that Megrahi was merely assumed to have acquired.

Withholding of evidence

During the trial itself, passages in CIA cables revealing that Giaka was in effect making up evidence to order were concealed from the defence, with Colin Boyd, the then Lord Advocate, falsely assuring the court that the redacted sections contained nothing which could in any way impinge on the credibility of the witness. When the unredacted cables were revealed, the opposite proved to be the case, and Giaka's credibility was entirely destroyed.

Inquiries carried out in connection with Megrahi's appeals revealed an alarming amount of important evidence never disclosed to the defence. These are only a selection.

- The report of the break-in at Heathrow the night before the disaster
- DC Henderson's baggage reconciliation report (despite his having given evidence at the FAI and in the USA in the 1990s)
- A statement from Tony Gauci suggesting that the clothes were bought on 29th November
- Police notes documenting the desire of the Gauci brothers for a reward payment
- The metallurgy results showing the coating on the 'timer' fragment was pure tin, while all the timers made for MEBO were coated with a tin-lead alloy
- The infamous 'public interest immunity' documents relating to the timer fragment

It seems inescapable that if the Zeist court had had access to the withheld evidence, their reasoning - and verdict - might well have been different.

Conclusion

The weight of evidence that the Lockerbie bomb was introduced at Heathrow (not all of which can be rehearsed here) is absolutely compelling. In contrast the evidence that the bomb transited from Malta through Frankfurt is beyond tenuous. In addition, no dispassionate examination of Tony Gauci's various and varied statements can possibly lead to the conclusion that Abdelbaset al-Megrahi bought the clothes in the bomb suitcase. Bearing in mind that Megrahi was verifiably in Tripoli at 4 pm on 21st December 1988, the time John Bedford took his tea break, some might reasonably observe that he has an alibi. It was his misfortune to be at the other end of the blind alley the investigators pursued to Malta, looking just suspicious enough and with the right contacts to have a wholly inferential case constructed against him.

Dr M G Kerr, on behalf of Justice for Megrahi

March 2012

Further reading

The Lockerbie Trial - a perverse verdict, by David Morrison

www.david-morrison.org.uk/libya/lockerbie-perverse-verdict.pdf

Lockerbie - the flight from justice, by Paul Foot (£5 download)

<https://privateeye.subscribeonline.co.uk/Products/digital-editions>

Report and evaluation of the Lockerbie trial, by Prof. Hans Köchler, UN appointed International Observer for the Kamp van Zeist trial

<http://i-p-o.org/lockerbie-report.htm>

Report on the appeal proceedings of the Scottish court in the Netherlands, by Prof. Hans Köchler, UN appointed International Observer for the Kamp van Zeist trial http://i-p-o.org/koechler-lockerbie-appeal_report.htm

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Justice for Megrahi committee members

Professor Robert Black QC ('Architect' of the Kamp van Zeist Trial)
Mr Robert Forrester (Secretary, Justice for Megrahi)
Father Pat Keegans (Lockerbie parish priest on 21st December 1988)
Dr Morag Kerr (Secretary Depute, Justice for Megrahi)
Mr Iain McKie (retired Superintendent of Police)
Mr Len Murray (retired solicitor)
Mr Kenneth Roy (editor of *The Scottish Review*)
Dr Jim Swire (father of Flora Swire, victim of Pan Am 103)

Justice for Megrahi signatories

Ms Kate Adie (former chief news correspondent for BBC News)
Mr John Ashton (author of *Megrahi: You Are My Jury* and co-author of *Cover-up of Convenience*)
Mr David Benson (actor/author of the play *Lockerbie: Unfinished Business*)
Mrs Jean Berkley (mother of Alistair Berkley, victim of Pan Am 103)
Mr Peter Biddulph (Lockerbie tragedy researcher)
Mr Benedict Birnberg (retired senior partner of Birnberg, Peirce & partners)
Mr Paul Bull (close friend of Bill Cadman, victim of Pan Am 103)
Professor Noam Chomsky (human rights, social and political commentator)
Mr Tam Dalyell (UK MP, 1962-2005; Father of the House, 2001-2005)
Mr Ian Ferguson (co-author of *Cover-up of Convenience*)
Dr David Fieldhouse (police surgeon present at the Pan Am 103 crash site)
Ms Christine Grahame MSP (Member of the Scottish Parliament)
Mr Ian Hamilton QC (advocate, author and former university rector)
Mr Ian Hislop (editor of *Private Eye*)
Ms A L Kennedy (author)
Mr Andrew Killgore (former US Ambassador to Qatar)
Mr Moses Kungu (Lockerbie councillor on 21st December 1988)
Mr Adam Larson (editor and proprietor of *The Lockerbie Divide*)
Mr Aonghas MacNeacail (poet and journalist)
Mr Eddie McDaid (Lockerbie commentator)
Mr Rik McHarg (communications hub coordinator, Lockerbie crash sites)
Mr Marcello Mega (journalist covering the Lockerbie incident)
Ms Heather Mills (reporter for *Private Eye*)
Rev John F Mosey (father of Helga Mosey, victim of Pan Am 103)
Cardinal Keith O'Brien (Archbishop of St Andrews and Edinburgh and Cardinal in the Roman Catholic Church)
Mr Denis Phipps (aviation security expert)
Mr John Pilger (campaigning human rights journalist)
Mr Steven Raeburn (editor of *The Firm*)
Dr Tessa Ransford OBE (poetry practitioner and advisor)
Mr James Robertson (author)
Dr David Stevenson (retired medical specialist and Lockerbie commentator)
Sir Teddy Taylor (UK MP, 1964-2005; former Shadow Secretary of State for Scotland)
Archbishop Desmond Tutu (winner of the Nobel Peace Prize)
Mr Terry Waite CBE (former envoy to the Archbishop of Canterbury, hostage negotiator)