Introduction

On 11th December 2012 the Justice Committee voted unanimously to maintain the status of PE1370 as open. The prime reason for this unanimity appeared to be that Committee members identified with the concerns of the Justice for Megrahi group (JFM) that the Cabinet Secretary for Justice Mr MacAskill had failed to agree to our request that he appoint an independent investigator into the eight criminal allegations we submitted on 9th November 2012. Instead Mr MacAskill determined that if we as a group wished to have our allegations investigated we should present them to officers of Dumfries and Galloway Constabulary and the Crown Office and Procurator Fiscal Service (COPFS). Given that both these bodies were central players in the Lockerbie investigation and the subsequent trial at Camp Zeist, and some of the allegations related to their own personnel, this raised anxiety that the matter would not be treated in an independent and even-handed manner, anxiety which Committee members appeared to share. The position of the Justice Committee may be best summarised by this statement by John Finnie MSP.

We should draw a distinction between complaints about service delivery by organisations such as the Crown Office and the police service, and serious accusations against individuals who work for those organisations. There are issues for others to speak about relating to confidential covers that are put on letters and what the expectations about them are from all sides. I certainly understand why the Justice for Megrahi people feel aggrieved about the manner in which the issue came into the public domain. I refer to the end of the first paragraph under the heading ‘Discussion’ on page 5 of paper 3. It seems to me that there is a classic catch-22 situation. There is understandable frustration where there are serious allegations for the Crown Office, which may be expected to act in the roles of judge, jury and accused. There are a number of unresolved issues. For that reason, I sincerely hope that committee members will agree to keep the petition open. That would certainly be the public expectation.

Having voted in support of PE1370, the Justice Committee agreed to hold the petition open “while the petitioners continue to pursue issues with the Scottish Government, the Crown Office and Procurator Fiscal Service and Dumfries and Galloway Constabulary.” JFM is now in a position to report to the Committee on developments in relation to these bodies’ responses to our allegations of criminality.

It is with the greatest regret that JFM finds itself unable to dispel either its own or the Justice Committee’s reservations over the handling of the allegations. Since our documentation was handed over to Dumfries and Galloway Constabulary in November, other than a formal letter of receipt neither the police nor the COPFS has initiated any direct communication with us on the matter.

We have had no progress or status report, nor any indication that these authorities intend to interview JFM committee members about the matter. In addition we are greatly concerned that COPFS has continued to use the press to mount base and
fallacious attacks on our organisation, just as it did following our original letter to Mr MacAskill in September. That attack in the Scotsman, discussed again below, has now been followed by the publication in the Times of an article entitled Pro-Megrahi backers flayed by Lord Advocate, which appeared on the very day of the 24th anniversary of the disaster.

A fulltext copy of that article is appended, and discussed below. JFM has no intention of indulging in debate by media. Since the last consideration of PE1370 by the Committee two further rounds of correspondence have been despatched to Dumfries and Galloway Constabulary and COPFS and one round to the Justice Directorate, and copies of these are also appended and discussed.

The Justice Directorate

In our letter of 18th January 2013, reiterating our original request of 13th September 2012, JFM asked the Justice Secretary to appoint a body independent of Lockerbie/Zeist to investigate our allegations. We do not and never have asked the Scottish government to investigate these matters for themselves. Nevertheless in his reply dated 6th February 2013 Mr Rennick (writing on Mr MacAskill’s behalf) persisted in misinterpreting our request as one for the government itself to mount an investigation. Mr Rennick insisted once again that our allegations should be dealt with by the police and the COPFS, despite their personnel being the subject of some of the allegations.

JFM is at a loss to devise a simpler and more accessible form of words to express its request that the government appoint an independent investigator in this matter rather than have to submit our allegations to bodies which are quite obviously acting in their own cause. We are therefore forced to conclude that the Justice Directorate is consciously misconstruing our request. The government has the requisite powers to appoint such an independent body to investigate our allegations, enshrined under section 1 and section 28 of the Inquiries Act 2005 (www.legislation.gov.uk/ukpga/2005/12/contents), and we find it incomprehensible that the Justice Directorate seems to be unaware of this.

For approximately a year and a half following the release of Mr al-Megrahi, the Scottish Government claimed that it did not have the power or remit to institute an inquiry into Lockerbie/Zeist under its own auspices. It was only when the parliamentarians of the Public Petitions Committee interceded on our behalf that the government finally admitted that it did, in fact, possess such powers under the same 2005 Inquiries Act (see: the government response to question 3 in www.scottish.parliament.uk/S3_PublicPetitionsCommittee/Submissions_11/11-PE1370A.pdf). In light of this, we request that the Justice Committee make representations on our behalf to the government to ascertain whether or not the government accepts that it has the power under the same Act to appoint an independent investigator in the matter of our allegations, and if it does, why it is not invoking these powers.

The Crown Office and Procurator Fiscal Service

Committee members are already aware from our submission for consideration on 11th December 2012 that our private and confidential letter to Mr MacAskill of 13th
September 2012 was passed to COPFS, who responded by going public in the Scotsman newspaper thus.

But the Crown Office yesterday branded the allegations “defamatory and entirely unfounded”. A spokesman added that one of the allegations had been investigated by the Scottish Criminal Cases Review Commission (SSCRC) which found no basis for appeal, while it was also found there was “no basis” for claims that any police officers or officials fabricated evidence. “It is a matter of the greatest concern that deliberately false and misleading allegations have been made in this way,” he added.

This remarkable tirade was of course based on only a brief outline of six of our allegations, as the full 39-page document detailing all eight allegations was not handed over to the police until November.

The only criticism the Crown Office makes here which has any degree of truth is that our allegations are defamatory. That is however a statement of the obvious given that we are accusing individuals of having broken the law. The remaining points are without exception entirely erroneous. Contrary to the insinuations in the article, our allegations are entirely unique, thoroughly researched and copiously referenced. At no time have they ever been the focus of any police, COPFS or SCCRC investigation.

For the benefit of members of the Committee, and to prove our bona fides, we attach the full text of the allegations as submitted to Dumfries and Galloway Constabulary, including an addendum submitted in March this year presenting additional evidence previously unknown to us which further underpins allegations 2, 3 and 4. The text is only slightly redacted to remove the names of the individual persons accused.

In the December Linklater interview Lord Advocate Mulholland states, “The appropriate place for voicing any concerns about the evidence is before a court of law, not in the court of public opinion, or the media.” Perhaps he ought to ask himself who consulted the court of public opinion first. Furthermore, we would be delighted to see our allegations come before a court of law; that is why we submitted them.

In his letter of 5 February 2013, Mr Miller stated on behalf of the Lord Advocate that the “appropriate mechanism” is being followed to investigate our allegations. However, the Scotsman article and the Linklater interview prove beyond any shadow of doubt that the Lord Advocate himself is adopting a double standard and treating our allegations in a manner which cannot be described as anything other than dismissive.

The casual reader could be forgiven for coming away from these media pronouncements with the understanding that JFM are “conspiracy theorists”; that our allegations are “without foundation”; that we have levelled criminal accusations against the Zeist trial judges (their Lordships MacLean, Sutherland and Coulsfield); that we have also accused Lord Boyd of Duncansby (the Lord Advocate at the time of the trial) of perverting the course of justice; and finally, that Lord Advocate Mulholland has recently engaged the services of a legal body independent of the Crown (the mysterious ‘outside counsel’) to conduct an independent review of the
evidence relating to our allegations, and that that body has concluded that the conviction of Mr al-Megrahi was sound.

[Redacted] Indeed, since accusations of defamation are growing ever more prevalent in this case, it is fair to say that Messrs Mulholland and Linklater have, in this one interview, defamed JFM committee members on several counts.

1. At no time, past or present, has JFM espoused any conspiracy theory in relation to Lockerbie/Zeist.

2. Committee members can judge for themselves whether or not our allegations are without foundation by perusing the allegations for themselves.

3. JFM has levelled no allegations of criminality against the Zeist trial judges, their Lordships MacLean, Sutherland and Coulsfield.

4. JFM has not levelled any allegations of criminality against Lord Boyd.

5. By far the worst example of economising with the truth evident in the Linklater/Mulholland interview concerns the fact that no “outside counsel” has studied our allegations at the invitation of Lord Advocate Mulholland. As is clear from Mr Miller’s letter of 5th February 2013, the counsel referred to in the article was in fact engaged by Lord Advocate Angiolini in 2007 to study the Crown case prior to Mr al-Megrahi’s second appeal. In other words, there was no independent counsel at all, simply a previously non-involved Advocate-Depute (i.e. internal counsel) reviewing the evidence at the time of the SCCRC report, five years before the JFM allegations were submitted. This makes the assertion about “independent review” highly disingenuous.

Lord Advocate Mulholland additionally states in the Linklater interview that he has read John Ashton’s book, Megrahi: You are my Jury, and concluded that there is no evidence to support Mr Ashton’s claims. In that case, what evidence does he wish to advance to invalidate the metallurgical test results described in the book which demonstrate that the shard of PCB usually referred to as PT/35b was not part of one of the 20 MST-13 timer units supplied to Libya? Furthermore, if he is dismissing the evidence in the book concerning PT/35b, is he also dismissing JFM allegations 5, 6 and 7, which all relate to the metallurgical discrepancy?

Mr Mulholland waxes lyrical on the subject of the SCCRC, however it was his office which was behind the government’s emergency Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 section 7 appeals legislation (a.k.a. Cadder), which has effectively emasculated the SCCRC, allowing the judiciary rather than an independent arbiter the final say on whether or not any appeal should be heard. Such legislation makes a third appeal against Mr al-Megrahi’s conviction much less likely to be permitted. On top of this, the Lord Advocate and the government are fully aware that in today’s Libya, the lethal political instability and factionalism render the odds of the al-Megrahi family applying for an appeal effectively zero.

Compare and contrast the Crown’s presentation of information surrounding our allegations with the manner in which it presents the details of its own “ongoing investigation” into the involvement of other Libyan officials in the Lockerbie atrocity. While dismissing JFM’s allegations out of hand Lord Advocate Mulholland hypes up
the highly publicised Crown Office sideshow in pursuit of other Libyan nationals whom the Crown wishes to implicate in the downing of Pan Am 103. Every Crown initiative in this “ongoing, live investigation” of Libya is announced with a fanfare in the press. Come the end of each of these adventures however, the Crown is remarkably reticent to inform the public of their findings, with the normal response to press questions being something along the lines of, “it would not be appropriate to comment on a live inquiry.”

One is left wondering why Mr Moussa Koussa, despite his reputation and the allegations levelled against him in years past in relation to Lockerbie, was released to freedom and his millions to live in Qatar following his ‘debriefing’. What really happened after Lord Advocate Mulholland visited Libya in May of 2012 accompanied by FBI Director Robert Mueller? Just when does the Crown Office intend to provide substance to what increasingly appears to be a mirage of justice, and focus on the facts?

To date we have had no response of any substance from the authorities. We hope the Justice Committee will agree that it is JFM’s right to be kept informed on how the Crown Office and Dumfries and Galloway Constabulary are progressing with our allegations. We therefore ask the Justice Committee to intercede on our behalf to extract the following information.

1. Answers to all the questions to Lord Advocate Mulholland and Chief Constable Shearer contained in our letters of 18th February 2013.

2. How many law officers (Crown Office and police) have been assigned to investigate our allegations?

3. When were they assigned to the case?

4. Why have no members of JFM been contacted with regard to the allegations?

5. In view of the fact that Mr Miller, in his letter of 5th February 2013, states that we will be contacted by police on the subject of our allegations, what instructions has Chief Constable Shearer received from the Crown Office regarding his contact with ourselves?

It seems intolerable that after five months JFM has not received so much as a status report, and we would ask the Committee to enquire on our behalf when the Crown Office intends to provide such a report with regard to the investigation of our allegations.

**Dumfries and Galloway Constabulary**

Other than formal acknowledgement of receipt and a brief email on 28th March, JFM has received no response from Chief Constable Shearer to our letters of 18th January 2013 and 18th February 2013. In light of this, JFM requests that the Justice Committee contact him and repeat the same questions we would like it to put to Lord Advocate Mulholland.
Reflection

This case has now become emblematic of an issue which affects each and every one of us. It poses profound and basic questions we ignore at our peril, namely: what do we perceive justice to be, what role ought it to play in our society and whom should it exist to serve? Our laws and how we apply them are the most fundamental descriptor of how we function as a cohesive and coherent society. They are effectively a portrait of our identity as a people. If, through complacency, we permit cosy, established authority to dictate terms and to brush under the carpet concerns over how justice is defined and dispensed for the sake of convenience, expediency and reputation, we will only have ourselves to blame for the consequences.

Some may question the relevance of our activities, a quarter of a century after the tragedy at Lockerbie, which occurred before many of the Scottish electorate were even born. Yes, we endeavour to seek justice for Mr al-Megrahi, the victims of the downing of Pan Am 103, their bereaved relatives and friends, and those ultimately responsible for this heinous act. However, fundamental to our motivation is our desire to reinstate the respect and stature of the Scottish criminal justice system, earned over centuries, yet now, sadly, in peril as a consequence of one misguided decision in a showcase trial.

The manner in which the Justice Directorate and the Crown Office are currently dealing with our entreaties is something which ought to be of deep concern to anyone who today falls under Scottish jurisdiction. We have a justice secretary who is abrogating his power to appoint an independent investigator to study submissions relating to 270 murders, and who affords the complainants the sole option of presenting their case before the very bodies that are being accused. [Redacted] One does not have to be involved in or even informed on the issues of Lockerbie/Zeist to appreciate the scandal that Messrs MacAskill and Mulholland are visiting on an already disgraced system. Indeed, if this is the attitude that these representatives of state find appropriate to adopt when dealing with an issue involving 270 miscarriages of justice, imagine how they might approach lesser more contemporary cases.

The Scottish Cabinet Secretary for Justice, Kenny MacAskill, says that “Scotland’s Criminal Justice system is a cornerstone of our society, and it is paramount that there is total public confidence in it.” We hope for the sake of the reputation of the Scottish criminal justice system that he will seek to prove this by backing up his words with deeds. We hope too that the Lord Advocate can be prevailed upon to serve the interests of justice rather than maintain his current stance of aggressively defending the indefensible.

The Committee of Justice for Megrahi, March 2013