PE1370: Submission and update to the Justice Committee of the Scottish Parliament regarding Police Scotland interviews related to the criminal allegations lodged by the Committee of Justice for Megrahi.

On Friday 16th and Monday 19th August 2013 members of the committee of Justice for Megrahi (JFM) were invited by DCC Shearer of Police Scotland to clarify a number of points related to the eight allegations of criminality levelled at the Crown Office, Police and forensic officials connected with the Lockerbie/Zeist Case.

A full report on what transpired at these meetings, and reaction to them, may be read in the appendix, which follows this brief synthesis and comment on events.

Before the interviews were conducted with Professor Robert Black QC, Mr Iain McKie, Dr Morag Kerr and Mr Robert Forrester, Mr Shearer informed them that the Crown Office had instructed that he no longer investigate allegations 5, 6 and 7 which contained some of the most serious allegations of perjury and perverting the course of justice. He indicated that it had been decided that a fundamental conflict apparently exists now between JFM’s allegations and the Crown Office’s and the FBI’s investigation into the incrimination of further Libyan nationals, along with Mr al-Megrahi, for the downing of Pan Am 103 on 21st December 1988. He was unable to give any further explanation and gave no indication if or when the investigation might be resumed and by whom.

The JFM representatives unanimously expressed their concern at these developments and made it clear that they only served to underline the relevance of their original request to Secretary for Justice Kenny MacAskill for an independent investigation free of Crown Office and Scottish police influence.

At the conclusion of the series of interviews, it seemed that JFM had been able to provide Mr Shearer with satisfactory answers to his questions regarding allegations 1, 2, 3, 4, 8 and the addendum.

JFM’s allegations have no bearing whatsoever upon the activities of the Crown Office and the FBI in their alleged pursuit of other Libyans for this atrocity. JFM’s allegations are solely concerned with the flaws and shortcomings in the investigation of Lockerbie and the subsequent legal processes, and are aimed at UK nationals on the grounds of their having attempted to pervert the course of justice, committed perjury and been guilty of gross professional incompetence.

Given that in 2009 Dumfries and Galloway Constabulary were tasking only one single police officer with what could have amounted to no more than file management, and since JFM and others have raised the profile of this case so significantly since 2008, it is the contention of JFM that the Crown Office is indulging in a cynical charade designed to convince the public that it supports the unsupportable solely to preserve its own tarnished reputation. The long and the short of it is that if JFM and other campaigners were to evaporate from the stage tomorrow, the Crown Office’s own so called ‘live’ and ‘on-going’ investigation would dry up with a ‘No comment’.
The Scottish Parliament is the legislature of this country. The Justice Committee is the parliament’s guardian on matters of justice. The Cabinet Secretary for Justice has ultimate executive power over all matters pertaining to justice. The Crown Office is a functionary which applies justice according to the law set down by the legislature. In this current situation the tail is wagging the dog.

The Crown Office has no right to block a Police Scotland investigation of JFM’s allegations 5, 6 and 7. The Crown Office is duty bound to instruct Police Scotland to thoroughly investigate all of JFM’s allegations including 5, 6 and 7. What kind of democracy are we living in when a group such as ours pleads with the democratically elected cabinet minister in charge of overseeing all matters in the sphere of justice to invite an independent body to study the veracity of our allegations, and he then passes our confidential communication on to the very body we are attacking? It, in turn, responds by publicly vilifying us and our allegations via the press before the investigations have even started.

Yet again the spectre of political interference rears its ugly head. Members of JFM regard this latest development as profoundly disturbing and sinister in that it confirms their original misgivings over having the Crown Office and police effectively investigate themselves. These arrogant and arbitrary actions by the Crown Office […] raise serious questions about the entire function and administration of the criminal justice system in Scotland [and the separation of powers between the executive and the Crown Office. Citizens of Scotland have a right] to a fair and impartial investigation of their legitimate concerns.

JFM believes that the Justice Committee of the Scottish Parliament, as guardians of the application of justice in Scotland, should forthwith approach the Crown Office demanding that [it] explains in detail, and in language other than ‘we cannot comment on a live inquiry’, precisely why [it] is rejecting the evidence relating to JFM allegations 5, 6 and 7.

Robert Forrester (Secretary, Justice for Megrahi).
On behalf of the Committee of Justice for Megrahi.
23 August 2013
Appendix

Over the course of Friday 16\textsuperscript{th} August and Monday 19\textsuperscript{th} August four of the five members of the Committee of Justice for Megrahi due to speak to the JFM allegations met with DCC Shearer and [his colleague] at Cornwall Mount (Police Scotland Dumfries and Galloway Division Headquarters) in Dumfries. The meetings were convened by DCC Shearer for the purpose of clarifying any gaps or issues which had arisen following his reading of documents relevant to JFM’s eight allegations of criminality levelled at Crown Office, police and forensic officials, and was the first contact the JFM Committee had had with DCC Shearer since the initial preparatory meeting in April.

At the Friday meeting, JFM was represented by committee members Professor Robert Black QC (speaking to allegation 1 – accusing Crown Office representatives of perverting the course of justice in relation to CIA evidence connected to Abdul-Majid Giaka’s Zeist testimony), Mr Iain McKie (speaking to allegation 8 – accusing police officers of coaching Mr Tony Gauci illegally and in contravention of police codes of conduct during the identification procedures of Mr al-Megrahi) and Mr Robert Forrester (speaking to allegation 3 – accusing the police of perverting the course of justice and/or contravening police codes of conduct with regard to Mr Manly’s evidence relating to the Heathrow break in). The interviews were brief and conducted on an individual basis. However, whilst Professor Black was interviewed alone, in the absence of JFM’s legal representative, he sat in on the interviews of Mr McKie and Mr Forrester at their request. All the interviews were constructive and courteous at all times, and, with the exception of a minor point of information with regard to allegation 3, which was cleared up on Monday, provided Mr Shearer with all the information he appeared to be looking for and more.

The Monday meeting addressed allegation 2: the suppression of evidence of the Heathrow ingestion of the IED; allegation 4: the failure to investigate the ‘rogue bag’ at Heathrow; and the addendum: dealing with luggage positioning in AVE4041. These were spoken to by Dr Morag Kerr with Professor Black in attendance as legal representative. As with the Friday meeting, Monday passed straightforwardly.

Followers of the activities of JFM and its allegations will note that whilst allegations 1, 2, 3, 4, 8 and the addendum have now been addressed by Mr Shearer in these individual interviews, allegations 5, 6, and 7 have not. Allegation 5 covers perjury in respect of fragment PT/35b. Allegation 6 covers the failure to disclose material evidence relating to PT/35b. Allegation 7 covers the failure to follow up metallurgy findings relating to PT/35b. All of these above allegations are based on information provided by Mr John Ashton, whose book, \textit{Megrahi: You are my Jury}’ revealed that the fragment PT/35b could not have originated from one of the circuit boards that were used in one of the timers that were supplied to Libya (one of which, according to the Crown, was used to blow up Flight 103).

At the commencement of the meeting on Friday 16\textsuperscript{th} August between DCC Shearer and the representatives of JFM, Mr Shearer informed JFM that he had approached the Crown Office in respect of allegations 5, 6 and 7. This consultation has resulted in the following: allegations 5, 6 and 7 are not to be investigated by Mr Shearer for the time being on the ground that they conflict with the interests of the current Crown
Office/FBI ‘live’ and ‘on-going’ investigation into incriminating other Libyan nationals for complicity with Mr al-Megrahi in the downing of Pan Am Flight 103 on 21st December 1988. In other words, the Shearer investigation of allegations to be spoken to by Mr Ashton has been ‘parked’. The JFM representatives unanimously expressed their concern at these developments and made it clear that they only served to underline the relevance of their original request to Secretary for Justice Kenny MacAskill for an independent investigation free of Crown Office and Scottish police influence.

The position of the Committee of JFM to this news is as follows. We are aware that members of the public do not trust the police investigation of JFM’s allegations. The fact that Mr Shearer ultimately has to report to the Crown Office on matters relating to the JFM allegations does not encourage us to suppose that Police Scotland or DCC Shearer are doing anything other than obeying instructions emanating from Chambers Street. It was Mr MacAskill who put Mr Shearer in his current position of having to deal with our allegations. [The whole issue raises serious questions about the separation of powers of the police, the Crown Office and the executive]. [This] is most regrettable and not conducive to public trust.

JFM did not submit its allegations in any mischievous or malicious manner and yet even before the police investigation had begun, the [Crown Office] saw fit to criticise their efficacy and accuracy in a highly public vilification of JFM. In our opinion it is the duty of Police Scotland and the Crown Office, as public servants, to preside over a thorough investigation of all eight of our allegations irrespective of whether or not they conflict with any other investigation before them. Our allegations have no connection whatsoever with any Crown Office investigation into the incrimination of other Libyan nationals being conducted by the Crown Office, they are entirely independent and should be treated as such. Indeed, it has previously been stated by JFM’s secretary, Mr Forrester, that the current so called live and on-going investigation is little more than a charade and eye-wash to deceive the public into thinking that the Crown Office’s hands are clean in this affair, and that, had it not been for the efforts of JFM and others of late, such an ‘investigation’ would more than likely never have suddenly inflated itself from a single officer in Dumfries in 2009 tasked with file management into the political tool it has become today.

At the Friday meeting, Mr Shearer made it plain that he clearly did not feel at liberty to divulge exactly what conflict exists between the issues of PT/35b, allegations 5, 6 and 7, and the apparently unrelated investigation being headed up by the Crown Office. Moreover, he was obviously also not at liberty even to inform JFM who the SIO of the Crown Office investigation is.

JFM regards this development as profoundly disturbing in that it confirms our misgivings over allowing the Crown Office effectively to investigate itself. It questions the entire function and administration of the criminal justice system in Scotland. The citizenry of this country are now put on notice that the Crown Office can direct Police Scotland not to investigate, or to defer indefinitely investigation of, any allegation which calls into question the conduct of the Crown Office itself. This is an outrageous scandal which has far reaching consequences. To some Lockerbie may be history, nonetheless, this current dispute is history in the making in the here and the now. Furthermore, it has the most serious of bearings on the nature of the relationship
between a people and how it perceives justice, forms it and endorses it, and all that
that implies, and moreover, how that society wishes those whom it appoints and
entrusts to administer justice to apply such upon itself.

What we are witnessing here is a Crown Office which is completely out of control
and has become a law unto itself. Far from the image of Scottish justice that Mr
MacAskill likes to wax lyrical about, the current conduct of the Crown Office is
beginning to bear a much closer resemblance to the types of systems prevalent
under politically repressive regimes. Scotland’s criminal justice system is now a
patient in dire need of intensive care if it is to survive in a form worthy of even
minimal respect […].

JFM will, in separate documents, now be requesting the Justice Committee of the
Scottish Parliament to study the developments regarding its allegations currently
before the Crown Office, and furthermore, will be considering whether our
complaints should be referred to bodies such as Amnesty International and the
United Nations International Association of Prosecutors (UNIAP) on the grounds of
the Crown Office’s blatant contravention of the UNIAP’s ‘Standards of Professional
Responsibility and Statement of Essential Duties and Rights of Prosecutors’ under
sections 2 and 3 of said document (adopted by the UNIAP on 23rd April 1999).