Justice for Megrahi submission for the PE 1370 consideration by the Justice Committee of the Scottish Parliament on 5th January 2016

Appointment of Independent Prosecutor

In previous submissions to the Justice Committee we have made it clear we believe that in order to acquire a fair, unprejudiced and truly independent decision on the final ‘Operation Sandwood’ police report a special prosecutor must be appointed by a process totally independent of the Lord Advocate and Crown Office, and must be seen to exercise his/her decision-making and prosecutorial functions without reference to the Lord Advocate and Crown Office.

Our requests are based on four central premises:

1. JfM’s nine allegations include allegations against Crown Office personnel and prosecution witnesses. This authority cannot therefore be a judge in its own cause. (nemo judex in sua causa)

2. Both before and after the criminal allegations were lodged with Dumfries and Galloway Constabulary, the Lord Advocate and Crown Office personnel publicly described the JfM complainers as ‘conspiracy theorists’, dismissed the allegations as, ‘defamatory and entirely unfounded …… deliberately false and misleading’ and acted publicly to underline their opinion that Mr. Megrahi and his as yet unidentified accomplices were the only guilty parties.

3. Both authorities have failed to acknowledge the two ongoing investigations into the 1988 Pan Am Lockerbie disaster are potentially in conflict. The first being conducted by Crown Office/Police Scotland ‘Lockerbie Investigation Team’, is based on the assumption that Megrahi did not act alone and his accomplices are still to be identified. The second ‘Operation Sandwood’ investigation, being carried out by a dedicated team of Police Scotland officers, is into allegations that, if proved, point to his innocence and possible wrongdoing by witnesses. In giving such open public support to the former investigation the Lord Advocate and Crown Office are prejudicing and prejudging the outcome of the latter. As soon as the second police investigation started these authorities should have protected its integrity and made no further public comment relating to Mr Megrahi’s guilt.

4. Given that the ‘Lockerbie Affair’ has been a central interest of the Crown Office over the 27 years since Pan Am Flight 103 was downed in December 1988 it is impossible to identify persons within that authority who could be truly said to be ‘independent’ or are not under the potential influence of the Lord Advocate and other persons who have publicly rejected the nine criminal allegations and vilified the members of JFM who made them.

In respect of premises 2 and 3 above we have attached a summary of the Lord Advocate/Crown Office public statements.
In our last update to the Justice Committee on 21st September 2015 we highlighted our correspondence with the Lord Advocate in relation to our request that a prosecutor totally independent of the himself and the Crown Office be appointed to assess and make decisions on the Operation Sandwood’ report due early next year.

We indicated that despite his assurances that the report would be ‘dealt with independently of the Crown’, the Lord Advocate had failed to layout the process by which this would be achieved. We suggested 8 questions for the committee to put to the Lord Advocate on our behalf.


On 24th September, while the committee did not pose our 8 questions, the Convenor wrote to the Lord Advocate stating,

‘Members would be particularly interested in knowing more about the appointment process itself, whether the person appointed is a current or former prosecutors with the Crown Office and Procurator Fiscal Service or is a practising lawyer in another jurisdiction, and what other measures or protocols have been put in place to guarantee the Counsel’s independence.

http://www.scottish.parliament.uk/S4_JusticeCommittee/General%20Documents/20150924CGtoLA.pdf

In his response of 6th October the Lord Advocate failed to answer your specific questions and certainly did not address the fundamental issues encapsulated in our questions.

On 5th November we wrote to the Lord Advocate, by recorded delivery, posing the same 8 questions we had suggested to you in our submission of 21st September.

He has failed to acknowledge our letter or to respond.

As matters proceed we have taken advice from senior legal authorities in Scotland and have been informed that in their opinion the Lord Advocate has a case to answer in that there is a prima facie case that he has shown bias and prejudice in relation to our criminal allegations and requests for an independent prosecutor.

We are advised that it is open to us to apply for a judicial review should he or the Scottish Government not take effective action to right these wrongs.

As you will appreciate however this is an expensive process which our small group is being asked to finance.

We believe it is open to the Justice Committee acting in the public interest to relieve us of this financial burden, take a definitive view on these matters and call the Lord Advocate and Scottish Government to account for their decisions in this regard.
Correspondence with the Cabinet Secretary for Justice

Over the past few weeks we have been in correspondence with the Cabinet Secretary for Justice about the refusal of the Lord Advocate to appoint an independent prosecutor and asking him to intercede. In his response Mr Matheson sees no need to take action as he believes the Lord Advocate has caused an independent prosecutor to be appointed. He fails however to address a number of important issues raised by JfM.

Copies of the related correspondence are attached for the committee’s information.

Correspondence with the Scottish Criminal Cases Review Commission (SCCRC)

We have also been in correspondence with Gerard Sinclair of the SCCRC voicing our concern about the Commission’s decision to drop the Lockerbie Relative’s submission for a third appeal.

We are particularly concerned at the timing of this action given we have a petition being actively considered by your committee and Police Scotland (Operation Sandwood) is about to report on our nine allegations of criminality. We see the SCCRC action as being interpreted as a desire to close the whole Lockerbie affair down.

Again we have attached copies of this self explanatory correspondence and we will be pleased to supply any further information required.

Finally, it is worth pointing out that the course of action that JfM is taking and the questions we are asking are not simply limited to a single case, no matter how significant, but are intrinsic to the functioning of the entire Scottish criminal justice system in a fair and unbiased manner and are very much in the public interest. Thus we believe that the JC continues to have a pivotal role to play in this affair.

We are most sincerely appreciative of the Justice Committee’s efforts in the matter of PE 1370.

Robert Forrester, Secretary Justice for Megrahi

On behalf of the Committee of Justice for Megrahi.