

authorities and a transcript of it was subsequently disclosed to the defence. The actual memorandum was believed to be held in Syria.

14.115 According to the submissions the contents of the memorandum included the suggestion that the PFLP-GC was responsible for destroying PA103 and that Abu Elias ([REDACTED]) had planted the bomb through a passenger on the plane, Khaled Jaafar (see chapter 13). The defence, it is said, was already aware of Marwan Khreiesat's claim that he had given an improvised explosive device contained in a Toshiba radio cassette player to Abu Elias. The Crown also revealed that one of the asylum seekers had said that he was responsible for overseeing payments to PFLP-GC members and that Abu Elias and Khaled Jaafar had received regular payments. According to the submissions the person concerned had also seen that a payment of one million dollars was received from the government of Iran. In addition it was revealed that Abu Elias was also known as [REDACTED] was resident in the US and, according to the submissions, in 1987 had paid into a bank account traveller's cheques purchased by Haj Hafez Kassem Dalkamoni, himself a member of the PFLP-GC.

14.116 It is stated in the submissions that the defence thereafter interviewed [REDACTED] who denied that he was Abu Elias, or that he was involved in the bombing. In addition, although he had dual US/Syrian nationality, [REDACTED] refused to provide to the defence his Syrian passport for the period covering 1988 although, according to the submissions, he admitted using it during that period. Subsequently [REDACTED] claimed through his US attorney that he had mislaid the passport.

14.117 The submissions narrate that motions for the issuing of letters of request were made in respect of Syria, Iran, Sweden and the US. All applications were opposed by the Lord Advocate as unnecessary and as constituting a "fishing expedition". The court refused the defence applications, except for the request to Syria for the original memorandum. Syria declined to comply with the letter of request and according to the submissions no further information was forthcoming from the US. There is also some suggestion in the submissions that the Crown's disclosure of information relating to the Goben memorandum was "late" and that the

defence was refused a further adjournment following the rejection of the motion for letters of request.

14.118 The submissions question why [REDACTED] had not been mentioned by the US authorities at an earlier stage, particularly as the traveller's cheques referred to had been examined by US officials in 1990. [REDACTED] had met with FBI special agents in August 1988, but the Department of Justice would not reveal the purpose of this or the identities of the agents involved. According to the submissions [REDACTED] admitted that such a meeting had taken place. In addition the FBI had apparently investigated [REDACTED] and knew that he was [REDACTED]. The FBI produced extracts from [REDACTED]'s diary for part of 1988, receipts which possibly demonstrated an alibi, work records and bank account information. According to the submissions, it is inconceivable that [REDACTED] did not produce his Syrian passport for examination.

The events at trial

14.119 Before considering these allegations, it is important to set out in detail the sequence of events at trial concerning the Goban memorandum.

Days 58-61

14.120 As indicated, on 9 October 2000 (day 58) the Lord Advocate informed the court that on 4 October the Crown had received important information from a foreign country. He submitted that the Crown should not lead evidence relevant to the incrimination until the issue of disclosure of this new information had been resolved. No details of the new information were provided at that stage and the Lord Advocate moved to adjourn the trial until 17 October in order to allow the Crown to investigate the matter. The court granted the Lord Advocate's motion.

14.121 On 17 October 2000 (day 60) the court granted a further motion by the Lord Advocate to adjourn the trial in order to allow the Crown to complete its enquiries into the matter. On 23 October 2000 (day 61) the Lord Advocate informed the court that the new information had been disclosed to the defence that day. The trial was then adjourned once more in order to allow the defence to consider the information.

The letter from Crown Office dated 23 October 2000

14.122 In its letter dated 23 October 2000 Crown Office informed the defence of the following:

- that the Norwegian authorities had provided information to the effect that notes by Mobdi Goben were understood to exist in which he alleged the involvement of the PFLP-GC in the Lockerbie bombing. According to the letter the notes apparently claimed the involvement of Abu Elias in planting, and Khaled Jaafar in unwittingly transporting, the bomb onto PA103.
- that the full memorandum was in Syria, that it was understood that it could be made available, but that the Crown had been unable to recover it.
- that the Crown had been provided with a tape which Goben's son, Samir, said contained his (Samir's) reading of the notes. It was understood that the tape contained most of the document but not its entire contents. The Crown was able to provide three pages of the notes in Arabic together with a translation of these.
- that it was alleged by some witnesses that Abu Elias was [REDACTED]

14.123 The letter from Crown Office also provided contact details for five witnesses in Norway whom it was considered the defence might wish to interview. These were Miroslava Goben (Goben's widow), Samir Goben and three witnesses whose true identities had been protected for safety reasons and who were known only as Sidali, Rabbieh and Malek. The letter also provided contact details for an individual in the US who, it was suggested, could be the same [REDACTED] as was mentioned by the witnesses. It was explained in the letter, however, that [REDACTED]'s passport and employment records tended to place him in the US at the times relevant to the allegations contained in the memorandum. The letter concluded by saying that

although the Crown did not consider the account attributed to Goblen to be a reliable one, it was appropriate that the information be disclosed.

The terms of the Goblen memorandum

14.124 On 25 October 2000 the Crown provided to the defence the tape recording of what was alleged to be Goblen's memoir as read by Samir Goblen. On 30 October the Crown produced a transcript of the recording. The transcript contains *inter alia* allegations that persons named Abu Elias and Khaled Jaafar, both said to be US citizens, were members of the PFLP-GC, that Abu Elias was a relative of Ahmed Jibril, the leader of the PFLP-GC, and that Abu Elias and Khaled Jaafar had travelled to and from various countries including Syria, Yugoslavia, Sweden, West Germany and the US. The memorandum also contains the following passages:

"... then Abu Elias, who was fully aware of what he was carrying, placed the device in Jaafar's luggage without his knowledge so that it would be conveyed for him to the destination when they meet in America. This device could not have been detected by any screening process. Although the operation should have been aborted because an identical device had been found with Abu Mohammed Hafez...

... The device should have detonated when the plane was over the ocean so that no evidence could be recovered to prove that there was an explosion."

14.125 In the Commission's view while the terms of the memorandum are often vague the above passages appear to relate to the bombing of PA103.

The chambers hearings

14.126 From 7 to 9 November 2000 private hearings, referred to as the chambers hearings, were held in order to consider four applications made by the defence in light of the contents of the memorandum. The applications consisted of motions in terms of the Criminal Justice (International Cooperation) Act 1990 for letters of request to be issued to Syria, Iran, Sweden and the US. The hearings were held in private

because of the sensitive nature of the information in the memorandum and because of witness safety considerations. Neither the applicant nor the co-accused was present.

14.127 The transcript of the hearing on 7 November 2000 indicates that the defence sought the following information in respect of its application concerning Syria:

- documentation in the possession of the Syrian authorities relating to the possible membership of Abu Elias, [REDACTED] and Khaled Jaafar in the PFLP-GC;
- records of the movements into and out of Syria of these individuals;
- the original or a copy of Goben's notes (ie the memorandum itself);
- the financial records of the PFLP-GC showing any payments to it by Iran or payments by the PFLP-GC to the same three individuals.

14.128 The application for the letter of request in respect of Iran sought information regarding, *inter alia*, any payments by Iran to the PFLP-GC or to Abu Elias, [REDACTED] and Khaled Jaafar. The application for the letter of request to Sweden sought *inter alia* records relating to the movements of these individuals. The application in respect of the US sought movement records relating to *inter alia* [REDACTED] and Khaled Jaafar. So far as the applications regarding Sweden and the US was concerned Mr Taylor, informed the court that discussions were continuing between the Crown and defence and that he was optimistic that both could be dealt with without troubling the court.

14.129 During the first chambers hearing Mr Taylor submitted that the test to be applied in considering whether to grant the applications for letters of request was as set out in *McLeod*. The court then heard detailed submissions on each of the applications. On behalf of the co-accused, Mr Keen said that the information available to the defence and presumably to the Crown was that Ahmed Jibril, the head of the PFLP-GC based in Syria, probably had the original memorandum and that the Syrian government, in the form of one of its agencies, had a copy of it. Mr Keen also referred to the witness known as Rabbieh, whom both the Crown and the defence had questioned, and who said had dealt with the finance department of the PFLP-GC.

According to Mr Keen, Rabbieh could speak to the records of that organisation still being intact when he had left it almost two years before and these would record that payments were made to persons named Abu Elias and Khaled Jaafar. The records would also show the receipt of substantial sums of money by the PFLP-GC from the government of Iran. Mr Keen said that it had been common currency on the internet for ten years that Iran had paid the PFLP-GC to bomb PA103 in retaliation for the bringing down of an Iranian Airbus by a US ship, the USS Vincennes, in July 1988. However, the defence had been unable to recover any evidence to support that claim and Mr Keen presumed that the Crown had also been unable to do so.

14.130 Mr Keen referred to [REDACTED] whom the Crown had suggested the defence might wish to interview. The Crown had said that there was a possibility that [REDACTED] might be the [REDACTED] whom the witnesses suggested was Abu Elias. Mr Keen said that the [REDACTED] identified by the Crown had made available for inspection and copying his own US passport for the relevant period. However, the defence had discovered when they precognosced him that he also held a Syrian passport which he used for travel and which he thought he might have lost during a house move. The defence had also established that [REDACTED] was the [REDACTED] [REDACTED] and that he [REDACTED] had been interviewed by the FBI in February 1989 at which time he was asked about the bombing of PA103 and about Dalkamoni.

14.131 The advocate depute, Mr Campbell, explained that it had initially been impossible for the Crown to pursue the information contained in the memorandum because Goban's widow and son were in Syria. The delay during the initial two week adjournment reflected the need for arrangements to be made for those witnesses to travel from Syria to Norway. Mr Campbell added that it was at a very late stage that the Crown was able to arrange interviews with them and it was at this time that the Crown received from Samir Goban the tape recording which he claimed had been made of the document prepared by his father. According to Mr Campbell it was said that the tape recording contained all but the last four or five pages of the document, and that Samir Goban and certain other witnesses who had seen the document (ie those named above) were able to give an account of the material contained in the last few pages.

14.132 Mr Campbell said that as a result of the information given by these witnesses the name [REDACTED] had come to the attention of the Crown. Enquiries were made and an individual in the US was identified. Mr Campbell said that the Crown's position, having obtained that information, was to disclose it to the defence. However, in relation to the allegation that Abu Elias placed the bomb in the property of Khaled Jaafar, the Crown's position was that this was untrue.

14.133 In respect of Iran, Mr Campbell said that according to the application the witness Rabbieh had informed the defence that he had been responsible for overseeing payments in one section of the financial department of the PFLP-GC, that he recalled that Abu Elias and Khaled Jaafar had been paid by the PFLP-GC and that regular payments, one of \$7 million, were made to the PFLP-GC by the government of Iran. However, when interviewed by the Crown Rabbieh had said:

"I can also recall being present in Abu Nidal's office around 1992 to 1993, when Jibril and Abu Nidal returned from Iran with a large quantity of cash in two briefcases. The fact that the money is usually paid through the embassy, as well as the fact that Jibril brought the money back personally, makes me think that this may be of some significance. I do not know what the money was for, or payment for a job. I was not told. I was told to bank the money. I did not count the money."

14.134 Mr Campbell said that it was plain from this that there was no information to indicate that the payment was in respect of the bombing of PA103. The timing of the payment was also well after the attack. According to Mr Campbell's submissions there was also no information to suggest that the [REDACTED] and Khaled Jaafar mentioned by Rabbieh as being members of the PFLP-GC were the same [REDACTED] [REDACTED] as had been identified by the Crown and the passenger Khaled Jaafar who died on PA103. In Mr Campbell's submission the defence had failed to satisfy the tests set out in *McLeod* in respect of its applications regarding Iran and Syria and the court should reject these. Mr Campbell added that the appropriate course in respect of the applications concerning the US and Sweden was to continue them pending discussions between the Crown and defence.

14.135 A second chambers hearing took place on 8 November 2000 at which time the court issued its judgment in respect of the applications concerning Iran and Syria. Having regard to the tests in *McLeod*, the court was not satisfied that it would be appropriate to grant letters of request to either country except for one matter. The court said that it had been averred that the original memorandum was with the PFLP-GC and that a copy was with the Syrian government or one of its agencies. The defence did not have a paper copy of the document but merely a transcript of a tape recording which was said to have been made of a substantial part, but not all, of the document. The court therefore considered it appropriate to attempt to recover the document in its full form, in case there was any matter contained therein which was not presently available to the defence. Accordingly, the court granted the letter of request to the Syrian government, restricted to the sole matter of the recovery of the document itself or a true copy thereof. In respect of the applications regarding the US and Sweden, the court noted that matters were still being negotiated and that it might require to return to these at a later stage.

14.136 A further chambers hearing was held on 9 November 2000 at which time the court heard submissions in respect of the application for a letter of request to Sweden. The court refused the application the following day (67/8177). Briefly, Mr Campbell explained that a letter had been sent by the Crown to the defence indicating that the Swedish authorities had found no record of any entry in to or departure from Sweden by [REDACTED] or [REDACTED]. The letter also said that a search for records of the movements of Abu Elias into and out of Sweden would be futile. The letter added that the Swedish authorities had looked at the whole issue of Abu Elias many years ago, and had no information which would lead to the identification of such a person. It followed that there were no records of any such movements.

Further events at trial

14.137 On 10 November 2000 (day 67) the advocate depute intimated to the court that the next witness the Crown intended to call was Abo Talb. Mr Taylor objected to this on the basis that the letter of request to Syria was outstanding and that defence enquiries arising from the disclosure of the memorandum were ongoing. After hearing submissions on the matter, the court said there was no reason why the Crown