Return to an Address of the Honourable the House of Commons dated 18 July 1996 for the Appendices to the Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions laid before The House on 15 February 1996*

Volume Four
Section J Other Prosecutions
Chapter 4 The Euromac Case

Excerpt:
THE EUROMAC CASE

J4.1 On 12 June 1991 Mr Ali Daghir and Mrs Jeanine Speckman were convicted of conspiracy to export from the United Kingdom to Iraq 40 electrical capacitors alleged to be specially designed for use in a nuclear warhead. They were sentenced to terms of imprisonment. On 25 May 1994 Mr Daghir's and Mrs Speckman's appeal against conviction was allowed on the ground of a material misdirection by the trial judge in his summing-up to the jury.

J4.2 The two defendants were officers of Euromac (London) Ltd. Euromac was a wholly owned Iraqi company registered in the UK and trading as a general sales company for goods, mainly heating and ventilation equipment, for export to Iraq. *1 Mr Daghir was Euromac's managing director. He was an Iraqi and a UK citizen. *2 Mrs Jeanine Speckman was Euromac's export executive. She was responsible for "Customs documentation and arrangement of shipment of items ordered by the Iraqis [from Euromac] and was "from early 1989, heavily involved in assisting the Iraqis in making arrangements for the design and manufacture of the capacitors and their export under the direction of Mr Daghir." *3 Mr Toufic Amyuni was Euromac's sales manager and consultant. He held a Lebanese and a United States passport. *4 He was a co-defendant at the trial but was acquitted by the jury.

J4.3 Prior to 1989, Euromac had been the subject of an undercover investigation by US Customs Service and, since 1989, also by Customs ID. Euromac and its personnel were suspected of planning the exportation from the United States to Iraq, via the UK, of forty electrical capacitors specially designed for use in the firing set of nuclear weapons. *5

J4.4 According to a Customs ID Report prepared in May 1990, the undercover investigation by US Customs Service, and latterly Customs ID, had revealed that:

> "In September 1988 an American company specialising in the design and manufacture of capacitors.... received an enquiry from its UK representative regarding the purchase of capacitors. From the specifications quoted... [the American company] suspected that the capacitors were for the use in a nuclear device,.... [it was established] that the initial enquiry had come from Euromac (London) Ltd, who were attempting to source the capacitors, and some high speed switches, for end-use in Iraq...." *6

According to the ID Report, Mr Daghir was told that the American company knew that "the end application of the capacitors was for nuclear warheads" and that an end-user certificate supplied to the American company, via Euromac, detailed "the end-use application as CO2 laser system, and the end-user as the University of Technology, Dept. of Applied Physics, Baghdad." *7 The capacitors were to be consigned to Euromac (London) Ltd. by the

American company. The Report said that "The final invoice described the capacitors for air conditioning equipment as agreed."

J4.5 On 20 March 1990 the 40 capacitors (with others) arrived at Heathrow Airport. They had been packaged in two boxes bound together in one crate. On arrival at Heathrow the crate was secured by officers in Customs ID and substituted by a similarly packaged crate containing inert and inoperable capacitors. *8 The substitute crate was, said the Report, removed from Heathrow and taken to Euromac's premises at Thames Ditton on 27 March where it was broken down into two boxes. On 28 March the two boxes were brought back to Heathrow Airport and taken to an Iraqi Airways aircraft for loading. At this stage the boxes were intercepted and detained by Customs ID officers. Various individuals were arrested, including Mr Daghir, Mrs Speckman and Mr Amyuni. The business premises of Euromac (London) Ltd were searched.

J4.6 After being interviewed by Customs ID Officers, Mr Daghir, Mrs Speckman and Mr Amyuni were jointly charged with attempting to export the capacitors in contravention of Section 68(2) of CEMA.

J4.7 Mr Fletcher, a Senior Professional and Technology Officer at the MOD was asked to advise on the potential uses to which the forty capacitors could be put. In a letter dated 15 January 1990 to Customs ID Mr Fletcher said this:

> "1. On Friday last, I visited AWE Aldermaston and Culham Laboratory, to seek assistance in advising on the use of the capacitor which you supplied me with.
>
> 2. AWE were in no doubt of its end use, which would make the item licensable under both ML4 and ML11 of Group 1, of Part II, of EG(C)O 1987.
>
> 3. The visit to Culham was to try and ascertain if this device had any genuine civil use... by the time I left I was convinced that there were criteria for this device which made it purely military in its uses....." *9

J4.8 On 10 April 1990 Mr Fletcher signed a witness statement in which he said:

> ".... I have been shown a letter dated 15 November 1989 and nine pages of specifications attached from [the American company] relating to a capacitor part....plus a copy hand written sheet of specifications headed....EUROMAC CAPACITOR CONTRACT/ORDER, plus a further hand written sheet of specifications headed High voltage Low inductance Capacitors having the following specifications. I believe that this capacitor has been specially designed for military use, and as such would fall to be caught under heading ML11 of Group 1 of Part II of the Export of Goods (Control) Order 1989 as amended." *10

ML11 was in the following terms:

> "Electronic equipment specially designed for military use and specially designed components and specially designed ODMA software therefor."

On 17 April 1990 Mr Peter Gall, a senior executive officer of the Export Licensing Unit of the DTI, signed a witness statement in which he confirmed that no export licence applications had been received from Euromac and said:

> "I can also confirm that capacitors specially designed for military use would require an export licence for export from the United Kingdom to any destination....
> I can confirm that an export licence would not be granted for the supply of any equipment which would significantly enhance the military capability of Iraq, including capacitors specially designed for military use and subject to control under heading ML11 of the Export of Goods (Control) Order 1989." *11

J4.9 On 20 July 1990 Counsel, Mr Gibson Grenfell, advised in writing "in relation to the desirability of obtaining further expert scientific evidence and evidence of prohibition." *12 Mr Grenfell referred to Mr Fletcher's evidence (cited above) but advised that it was "of paramount importance to know whether or not Mr Fletcher has reached this view on the basis of his own experience or whether, as may well be the case, he has consulted others and has reflected their view in what he says." *13

J4.10 On 28 August Mr Fletcher signed a second witness statement in which he said:

> "Further to my witness statement dated 10th April 1990 the specifications for the capacitors.... specify that the capacitors were to meet military specifications for humidity, shock and vibration.
>
> I can say that any electronic component, which an electrical capacitor is, which has been designed to a military specification falls to be caught under heading ML11 of the Export of Goods (Control) Order 1989, as amended.
> I can further say that electrical capacitors specially designed for use in an item covered by head ML4 - Bombs, torpedoes, rockets and missiles.... fall to be caught under the same head, ML4 of the Export of Goods (Control) Order 1989, as amended." *14

And on the same day Mr Gall signed a second witness statement in which he said:

> "Further to my witness statement dated 17th April 1990 I add the following.... I can say that an export licence for these 40 capacitors would have been refused.
> However, although the exporter of the capacitors did not make an application for an export licence for the goods, on 15th July 1990 I prepared an application form for a licence to export the goods to Iraq under the imaginary name of Petts Wood Electronics. The application was treated in the normal way by the DTI and it's advisors.
>
> In accordance with normal procedures the case was circulated to our advisory Departments and at that stage the goods were identified as falling within entry ML11 in Schedule 1 of the Export of Goods (Control) Order 1989, as amended, and refusal of the licence was recommended.
>
> The application was then considered in the normal way by the Inter-Departmental Committee of Government departments responsible for considering export licence applications for Iran and Iraq. Refusal of the licence was again recommended. The final decision on granting or refusing an export licence application for Iran and Iraq is laid to the Secretary of State for Trade and Industry based upon recommendations of the IDC, and other Government Ministers. A final decision on this application is still pending." *15

The papers before the Inquiry do not reveal the outcome of this application.

J4.11 It was not necessary for the Prosecution to prove that if an export licence had been applied for it would have been refused, but it was common Customs practice to obtain evidence to that effect from a suitable DTI official. No licence had been applied for or granted. All that the prosecution had to prove was that the capacitors were specially designed for military use and were therefore licensable, that the Defendants knew that the capacitors were licensable, that no licence had been granted for their export and that the defendants were intending to export the capacitors to Iraq.

J4.12 Although, in law, the case against the defendants required that the capacitors be proved to be specially designed for military use, the case was, in the event, presented on a much narrower basis, namely, that the capacitors were specially designed for use in nuclear weapons. This, of course, was a matter for expert evidence. Mr Leon Edwards was employed in a US government national laboratory engaged in nuclear weapons research and development. He was a competent expert witness and, in a statement dated 25 April 1990, expressed the opinion that the specifications relating to the capacitors were consistent with the capacitors having been "designed for a high-current, pulse-discharge application", that "typical applications [of the capacitors] include conventional and/or nuclear weapons" and that the specifications also were "consistent for a capacitor used in a firing set for nuclear weapons." *16 Mr Kowalsky, president and chief executive of the American company that had manufactured the capacitors, also made a statement. In evidence at the committal proceedings, he said that, on learning of the specifications desired for the capacitors, he "came immediately to the conclusion that this was the specification for a capacitor designed as the triggering device for a nuclear weapon." *17

J4.13 The Prosecution, both at committal and trial, based the Crown's case on the allegation, derived mainly from the evidence of the American witnesses, that the capacitors were specifically designed to be used in firing sets for nuclear warheads.

J4.14 The Committal hearing took place at Uxbridge Magistrates' Court on 3 September 1990. At the hearing Euromac was joined to the proceedings. *18 The Stipendiary Magistrate committed all four defendants for trial by jury in the Central Criminal Court. The joint charge upon which the defendants were committed for trial was as follows:

> "Between 20 and 28 March 1990 at Heathrow Airport and elsewhere in the United Kingdom was knowingly concerned in the attempted export of forty (40) electrical capacitors with intent to evade the prohibition in force imposed by the Export of Goods (Control) Order 1989 as amended. Contrary to Section 68(2) of the Customs and Excise Management Act 1979." *19

On 3 October 1990 the indictment was lodged at the Court. A further count of conspiracy had been added, charging the defendants as follows:

> "Statement of Offence
>
> Conspiracy knowingly to be concerned in the exportation of goods with intent to evade the prohibition of exportation thereof. Contrary to Section 1(1) of the Criminal Law Act 1977.
>
> Particulars of Offence

> Ali Ashour Daghir, Euromac (London) Limited, Jeanine Celestine Speckman and Toufic Fouad Amyuni on divers days between the 1st day of September 1988 and the 29th day of March 1990 conspired together and with one Walid Ahmed, one Karim and one Omar Latif and with other persons unknown knowingly to be concerned in the exportation of certain goods namely forty electrical detonation capacitors with intent to evade the prohibition on exportation thereof imposed by the Export of Goods (Control) Order 1989." *20

In November Mr Alan Moses QC was retained to lead for the Crown in the prosecution. The trial was scheduled to commence on 22 April 1991. At the trial the prosecution proceeded on the conspiracy count only.

J4.15 It was known well in advance of the trial that the defence would be based on a denial that the capacitors were designed for use in the triggering mechanism of nuclear weapons. A note dated 3 December 1990 from Miss Annabelle Bolt, Customs Solicitor's Office, to Mr Ian Walton, CDB, said that "The Defence case will be that the capacitors were for use in the 'Big Gun' project - Operation Bertha - and that this was designed for the launch of satellites into space...."*21 A letter dated 29 November 1990 from Mr Daghir's solicitors referred to "the allegation.... that these capacitors would form part of a nuclear weapon" and said

> "Our client strenuously disputes the charge and believes that the capacitors in question were for a different use." *22

J4.16 A letter dated 7 February 1991 from Dr L J Lloyd, an expert in the same MOD department as that to which Mr Fletcher belonged, gave what might be taken to have been a warning against an over-narrow approach to the potential use to which the capacitors might be put. He said:

> "It has always been the MOD's stance that the capacitors were designed and manufactured to military specifications, and as such, whilst we have no doubt that they were intended for use in a nuclear weapon, that is almost irrelevant." *23

J4.17 On 7 March 1991 Miss Bolt sent to the Attorney General's office a copy of the Case Summary which had been prepared by Mr Grenfell for the committal proceedings and said that "the facts and matters to be relied upon at trial are substantially the same." *24 The Case Summary made clear that the alleged nuclear weapon use for which the capacitors had been designed would be the basis of the prosecution case: Thus:

> "40 of the capacitors made in the United States to the order of an Iraqi State Institution, Al Quaqaa.... were specially designed for detonating bombs and in particular allege the prosecution, nuclear bombs" (paragraph 1.3).
> "...the prosecution case is that the capacitors were specially designed and made for use in a nuclear bomb." (paragraph 1.5)
> ....
> "This case concerns capacitors which are specially designed.... what was that special case?.... The Prosecution say the purpose was to discharge the electrical power necessary to detonate a bomb, in particular,to detonate a nuclear bomb" (paragraph 3.16)
> .....

> "...these capacitors were specially designed for discharging the electrical energy in the amount and way necessary to fire detonators used for causing a nuclear explosion and a nuclear bomb" (paragraph 3.20)
>
> .....

and

> "The capacitors were designed to release sufficient energy with sufficient precision to detonate a bomb and in particular a nuclear bomb" (paragraph 3.23). *25

J4.18 The emphasis, apparent in the Case Summary, on the allegation that the capacitors had been specially designed for use in nuclear weapons was maintained throughout the trial. However, the trial judge, in the summing-up, left the issue of special design to the jury on a wider basis. He directed the jury that it was open to them to convict if they found the capacitors were specially designed for any military use. He referred to the prosecution case that "these capacitors were specially designed for use in the firing system of a nuclear bomb", to the defence case "that the capacitors were or may have been designed for a civilian purpose...", but invited the jury to decide "whether it is proved that these capacitors were designed for military use".

J4.19 The jury convicted Mr Daghir and Mrs Speckman but acquitted Mr Amyuni. The Prosecution had, before the trial began, decided not to proceed against the company. Both Mr Daghir and Mrs Speckman were sentenced to terms of imprisonment; Mr Daghir for 5 years, Mrs Speckman for 18 months. *26 Both appealed, with leave, against conviction.

J4.20 A number of grounds of appeal were put forward falling, broadly, under the following heads:

> (i) alleged misdirections by the trial judge in the summing-up to the jury;
>
> (ii) the alleged failure by the trial judge to put the defence case adequately to the jury;
>
> (iii) alleged errors by the trial judge in allowing the prosecution to adduce certain evidence and, in particular, the evidence of an individual claimed by the defendants to have played the part of an "agent provocateur."

In addition the defendants proposed to seek leave to adduce fresh evidence to refute the proposition that the capacitors had been specially designed for use in nuclear weapons.

J4.21 In the event, the appeal was decided in the defendants' favour on the first ground put forward. The point was described by the Lord Chief Justice, Lord Taylor of Gosforth, in his judgment delivered on 25 May 1994, as follows:

> "To convict the defendants of the alleged conspiracy, two things had to be established, apart from the existence of a relevant agreement. First, that the capacitors were goods the export of which without a licence was prohibited by the Order. Second, that the defendants knew the goods fell into a prohibited category. At the trial, however, the prosecution put its case on the first issue as to the nature of the goods, in a specific and narrowly defined way. Their case throughout the trial was that the capacitors were specially designed for the firing set of a nuclear bomb. They called a great deal of expert evidence about the capacitors to demonstrate that they had indeed been specially designed for that nuclear purpose. It will be noted that the prosecution's case was much

more limited and specific than the general terms of the Order. In particular, the Order's prohibition of category ML11 refers much more widely to "military use". However, as to the second matter the prosecution had to prove, the necessary state of mind of the defendants, they sought to prove only that the defendants knew export of the capacitors was prohibited; that is, that they fell into the category of goods "specially designed for military use" in general, not necessarily military use in a nuclear weapon.

Having chosen to allege that the capacitors were for nuclear use, the prosecution had to prove that specific purpose if they were to satisfy the jury on the first part of the case. That was fully and properly accepted by the Crown in this appeal. Mr Moses conceded that if the jury was directed or left with the impression it could convict on the basis that the capacitors were specially designed for military use generally, then the summing up was materially defective. He further conceded that such defect could not be cured by the application of the proviso to section 2 of the Criminal Appeal Act 1968. The evidence during the trial and the lengthy arguments addressed to the jury by counsel, were directed at the case put forward by the prosecution that the capacitors had been designed for nuclear use. Since the Crown had nailed their colours to that mast, the defence were emboldened to call expert evidence, in particular from Mr Tilford, that the capacitors could be used in flash units for photographing explosives and ballistics. If the photography was of military ballistics, the capacitors could be said to be for military use thereby potentially bringing them within the wide terms of category ML11 of the Order and rendering their export unlawful. But the evidence served to rebut the prosecution's specific case that the capacitors were designed for nuclear weapons.
Before us, the Crown argued that the jury must clearly have understood the case they had been hearing from some six weeks was all about alleged nuclear applications, not least because, as already indicated, the defence felt free with impunity to contradict the prosecution case with evidence pointing to military use of some other sort. The expert evidence had all been about whether the capacitors were, in the terms of category ML11, "specially designed": and the only special design ever suggested by the prosecution was for use with nuclear bombs.
The appellants' complaint under Ground 1 was that the learned judge wrongly left it open to the jury to convict if they found the capacitors were specially designed for any military use, instead of confining them to use for a nuclear weapon." *27

The Lord Chief Justice then directed his attention to the content of the summing up and expressed the following conclusions:

"The jury may well have thought the judge was indicating that "military use", a term used in that Order, meant military use in a broad sense and that the liability of the defendants could be put on a wider basis than the use for nuclear purposes on which the prosecution relied.

This passage in our view exposed the appellants to a significant risk of being convicted on a basis different from that on which the case had been fought. The defendants had adduced evidence to show that the capacitors was not for nuclear purposes, although they might be intended for some other military purpose. The passage cited above suggested the contest between the parties was between all military use, on the prosecution side, and civilian use on the defence side. The jury, remembering the defence evidence and putting it together with the judge's directions on the law, could well have thought the defence evidence itself was enough to establish guilt." *28

and

> "The prosecution's decision to put its case exclusively on the basis of 'use for nuclear purposes' required a clear direction from the judge as to the consequences which flowed from that decision. Nowhere in the summing up did the judge tell the jury that the prosecution had to prove that these capacitors were designed for use in nuclear bombs and that unless they were sure of that they must acquit. On the contrary there were, as we have shown, a number of passages suggesting design for some, or any, military use would suffice. There was in the circumstances a material misdirection and since it is conceded that the proviso cannot be applied, we concluded that these appeals must be allowed and the convictions must be quashed." *29

J4.22 The Court of Appeal, having concluded the case in the appellants' favour on the first ground of appeal, did not find it necessary to express any view on the other grounds. In the circumstances it remains a matter of speculation what conclusion the jury would have reached if properly directed on the question whether the Crown had proved that the capacitors were intended for use in nuclear weapons and a matter of speculation also what, if any, effect the additional evidence the appellants desired to adduce would have had on that question.

J4.23 I have been made aware by the solicitors acting for Mr Daghir, who have supplied me with a copy of Counsel's Opinion, that Mr Daghir has in mind to bring a civil action against Customs for damages for malicious prosecution and that a key element in that action would be the involvement in the circumstances leading up to the defendants' arrest of the alleged "agent provocateur." I have not examined the material relating to that aspect of the prosecution and have no opinion to express on it. There apart, however, the evidence available to Customs justified, in my opinion, the institution of the prosecution.

Endnotes:
*1 - CE/75.55
*2 - CE/75.55 and CE/75.198
*3 - CE/75.195 at 199
*4 - CE/75.55
*5 - CE/75.55 and CE/75.195 - 198
*6 - CE/75.55 at 56
*7 - CE/75.55 at 56
*8 - CE/75.55 at 57
*9 - CE/75.3
*10 - CE/75.47
*11 - CE/75.50
*12 - CE/75.91 - 93
*13 - CE/75.91 at 91A
*14 - CE/75.97
*15 - CE/75.99
*16 - see Mr Edwards' statement dated 25 April 1990, attached to a letter dated 26 September 1995 from Customs to the Inquiry (CE/787A)
*17 - see Mr Kowalsky's signed deposition, pp. 3 and 4, attached to a letter dated 3 October 1995 from Customs to the Inquiry (CE/800)
*18 - CE/75.96 and CE/75.103
*19 - see the committal certificate attached to a letter dated 26 September 1995 from Customs to the Inquiry (CE/787B) and CE/75.103 at 104
*20 - CE/75.212

*21 - CE/75.117: see also Miss Bolt’s note to Mr Walton dated 1 February 1991, paragraph 1 (CE/75.162)
*22 - CE/75.118
*23 - CE/75.175
*24 - CE/75.193
*25 - CE/75.195 - 211
*26 - CE/75.248
*27 - Court Transcript, pp.4 to 6
*28 - Ibid p.8
*29 - Ibid p.11