SECRET JUSTICE
Public Interest Immunity Certificates (PIICs) and their use in the Asil Nadir trials

Martin Tancock

In March 2013, Lord Maginnis of Drumglass asked the following questions of Her Majesty's Government, regarding the imposition of PIICs in the trial R v Asil Nadir (2011-12):

> *To ask Her Majesty's Government how many documents were subject to public interest immunity certificates during the trial of Asil Nadir. [HL5942]*
>
> *To ask Her Majesty's Government whether they intend to apply for public interest immunity certificates for the three boxes of documents relating to the Asil Nadir case recently found by the Serious Fraud Office; and, if so, under what legal mechanism. [HL5943]*
>
> *To ask Her Majesty's Government whether the public interest immunity certificates issued during the trial of Asil Nadir are still in force; and, if so, for what reason. [HL5944]*

The Advocate General for Scotland, Lord Wallace of Tankerness QC, responded on behalf of the government, in a written answer, on 15 March 2013:

> *It would not be appropriate to comment on any substantive application for public interest immunity or to provide details.*

Lord Wallace sought to clarify and justify his response in a letter to Lord Maginnis dated 23 March 2013:

> *I understand that you have raised with Baroness Stowell of Beeston concerns about the information I provided in the Written Parliamentary Answer on 15th March 2013, in relation to the Asil Nadir case and public interest immunity certificates.*
>
> *The reason I could not address your question directly is that it is not appropriate to comment on the details of any case in relation to matters of the kind you raised with*

me.

He went on to explain the ways in which the courts approach questions of public interest immunity:

> *The doctrine as applied in the criminal courts, concerns the circumstances in which material held by the prosecution cannot be disclosed fully or even at all, without risk of serious prejudice to an important public interest.*

He concluded:

> *Commensurate with the nature of the public interests sought to be protected, the rules of court impose very strict obligations of confidence on the parties dealing with a case in which PII issues arise.*

By the end of July 2013, Lord Maginnis, frustrated by the lack of interest shown by government ministers, sent an e-mail to 'Members of Government'. In it he wrote:

> *I was lied to by the head of the SFO and have been deliberately frustrated by the Parliamentary system to which I have devoted 30 years of my life.*
>
> *I know that a great injustice has been done – when did a trial for alleged fraud ever merit over 35 PII certificates? Whoever has had a hand in this cover-up over the past 30 years, it is now the responsibility of Government to make amends.*
>
> *This deceit brings the whole of the British Justice system into disrepute.*

Response from the government

On 15 August 2013, Oliver Heald QC MP, Solicitor General, responded as follows:

> *Dear Ken*
>
> *The email dated 31st July and addressed to "Members of Government" has been sent to this office for reply as it concerns the fairness of the trial of Asil Nadir. As you are aware, the Serious Fraud Office is subject to the superintendence of the Attorney General. I reply in his absence.*

I know you have strong views about a number of issues in respect of the investigation and prosecution of this case and which have been expressed on many occasions. I also recognize your frustration because you feel that your questions are not being treated in a way that reflects your position as a senior and experienced Parliamentarian and peer.

You refer specifically to there being 35 Public Interest Immunity certificates used in the Trial of Mr Nadir and suggest that it is therefore axiomatic that an injustice was done. A specific question was asked by you and replied to by the Advocate General for Scotland on 18th March of this year and this was followed by a letter from Lord Wallace dated 23rd March in which the Advocate General sought to provide you with an explanation of how PII is used, for what reason and why it was not possible to reply in the detail you asked for.

I realise that you do not accept that explanation and that my reply is not going to change your mind. Nevertheless I will make three points. The first is that the use of PII certificates does not render a trial unfair. The trial judge will not allow the use of PII if the effect is to render the trial process unfair to the defendant. Secondly, as the name suggests, PII is only used to protect an important public interest. This may be national security; it may be the safety of an individual. Sometimes the defence in a trial can be told a PII application is being made; sometimes even letting the defence know an application is being made would risk disclosing the very information that is being protected. This means that the use or otherwise of PII certificates is neither confirmed nor denied outside the trial process. So, I am not able to confirm or deny what happened in the trial of Mr Nadir. Again the fairness to the defendant is at all times monitored by the trial judge so, the trial of Mr Nadir remained a fair one.

Yours sincerely

Oliver

Oliver Heald QC MP

Solicitor General

The three points of Oliver Heald QC MP, Solicitor General

> Point 1*. The first is that the use of PII certificates does not render a trial unfair. The trial judge will not allow the use of PII if the effect is to render the trial process unfair to the defendant.*

In the Matrix Churchill trial of 1992, Judge Brian Smedley QC, needed much persuasion before ordering the disclosure of the documents suppressed by the PII certificates and Mr Rupert Allason MP suggested he might well have been unique in challenging the certificates. Prosecuting counsel Alan Moses QC (whose astute handling, as prosecuting counsel in the Euromac trial, had not only led to the imprisonment of two innocent people but even on appeal caused their ruination) had told the judge that the documents contained nothing of assistance to the defence. It was only when Geoffrey Robertson QC, counsel for Paul Henderson, against the advice of counsel for the other two defendants, brought out Henderson's links with MI6 that the judge ordered disclosure of documents relating to the security services, having earlier, after Alan Clark's sensational evidence, allowed only disclosure of documents relating to policy-making within government departments.

The judge in the 1992 Ordtec trial,[1] His Honour Judge Stanley Spence, allowed PIIs to be invoked, thereby making it appear that the defendants were acting unlawfully and profiting from the export of fuses to an embargoed destination – Iraq. The PIIs were issued to prevent an officer of Special Branch, DS Wilkinson, from verifying that Paul Grecian had been acting with official backing in order to gather intelligence on Iraq. The Public Interest Immunity certificates were signed by Kenneth Baker and Peter Lilley, relying on an assessment by the prosecuting council that the documents in question were not relevant.

Grecian was exonerated in 1995, at the Court of Appeal,

1 On which see <http://jancom.org/JANCOMHouseOfCards442.html>.

when it became apparent 'that the government had failed to disclose the relevant documents'.

> Point 2. *Secondly, as the name suggests, PII is only used to protect an important public interest. This may be national security; it may be the safety of an individual. Sometimes the defence in a trial can be told a PII application is being made; sometimes even letting the defence know an application is being made would risk disclosing the very information that is being protected. This means that the use or otherwise of PII certificates is neither confirmed nor denied outside the trial process.*

Gerald James says in his book *In the Public Interest* (London 1995):

> 'The only time you need total secrecy is when you are actually in a state of war with another country. A number of the clandestine conventions of government in this country are rooted in the need for secrecy during wartime and have never been removed, and of course these are very useful tools for a corrupt government and civil service. If the Bourn Report came out,[2] it wouldn't undermine the nation, it would only undermine the government. There is this confusion of interests.'

James was discussing the suppression of the Bourn Report into the Al Yamamah arms contract with Saudi Arabia but his remarks are applicable to R v Asil Nadir (2011-12) and other cases where the use of PIICs featured prominently.

It is a matter of public record that there were 36 PII certificates imposed in R v Asil Nadir (2011-12), plus another 8 on a supplementary list. Of those 36 PIIs, 19 related to the handling of the informants Michael Francis, Wendy Welsher and Michael O'Keefe by the Metropolitan Police and the bribery allegations against Mr Justice Tucker during R v Asil Nadir (1992-93). The supplementary list also relates to police intelligence.

There were two attempts to derail the trial of R v Asil Nadir (1992-93) when the trial judge, Mr Justice Tucker, was

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2 On Bourn see Appendix 1 below.

accused of bribery and corruption. The bribery charge was dropped when the perpetrator, Detective Chief Superintendent Tom Glendinning of the Metropolitan Police, had to admit in open court that there was and never had been any evidence. The corruption charge involved Asil Nadir, his defence counsel Anthony Scrivener QC and an assistant commissioner of the Metropolitan Police Wyn Jones. It was also investigated by Det. Chief Insp Glendinning and his team.

In the autumn of 1993, police informants Michael Francis and Wendy Welsher gave sworn statements that they were blackmailed and bribed to frame Asil Nadir.

In a letter to the Serious Fraud Office dated 12 October 2011, Bark & Co, Solicitors for Asil Nadir, stated:

> *On 13 September 2011, Bark & Co wrote to Sir Paul Stevenson, the then Commissioner of Police enquiring into an investigation into the circumstances in which the original allegations of perverting the course of justice were first made and enclosed a letter dated 10 December 1993, written by Detective Superintendent Glendinning. Under reply dated 16 September 2011, Commander Peter Spindler of the Directorate of Professional Standards responded as follows:-*
>
> ***"The MPS*** [the Met] ***is aware of the ongoing criminal investigation to which your letter refers….."***
>
> By letter dated 27 September 2011, Bark & Co responded as follows:-
>
> *Thank you for your letter dated 16 September 2011 and for your indication that there is an ongoing criminal investigation concerning the circumstances into which the original allegations of perverting the course of justice were first made. It is not clear whether this is a re-opening of the original investigation that was conducted in 1993, or is more recent.*
>
> In his reply dated 29 September 2011, Commander Spindler reminded us that the Serious Fraud Office ***"had made contact in accordance with their obligations under the Criminal Procedures and***

Investigations Act 1996 (approaching potential third party material holders)”.

Importantly, he stated as follows:-

“With that in mind it would not be appropriate for me to discuss this investigation with you any further at this stage.”

So we have a case which is twenty years old, that is still open and being investigated, but because it is an active investigation it cannot be said if it is a continuing investigation or one that has conveniently been re-opened to coincide with the trial of Asil Nadir. It also cannot be said who is carrying out the investigation, who are the prime suspects or how big a team is doing the leg work. What can be said is that the release of evidence relating to the case is conveniently refused.

The Serious Fraud Office used PII certificates to deny access to documents from this investigation during Nadir’s second trial, which started in 2011.

Where is the public interest in denying this information? What part of national security would be threatened? Whose safety would be jeopardized? Or is it more likely that these documents would confirm wrong-doing in the Metropolitan Police and the Serious Fraud Office rendering the conviction of Asil Nadir unsafe and seriously embarassing high ranking officers in those organisations?

The government interest might be threatened but not the national interest. The Establishment is here protecting its own against the interests of an individual. Confirmation of the existence of PII certificates and the release of documents becomes vitally important.

> Point 3. *....the fairness to the defendant is at all times monitored by the trial judge so, the trial of Mr Nadir remained a fair one.*

It is equally not axiomatic that fairness to the defendant is at all times monitored by the trial judge and that the resulting trial will be a fair one. That is not to suggest that any trial judge would be overtly unfair. Nevertheless, the appointment

of judges in major trials of public interest, where a 'safe pair of hands' is required and certain outcome is expected, begin to resemble political appointments and are now made by the Permanent Secretary at the Ministry of Justice. Between 2003 and 2007 the appointments were made by the Permanent Secretary at the Department for Constitutional Affairs; and before 2003 by the Permanent Secretary in the Lord Chancellor's Department, in consultation with his or her political master. Selection of an appropriate judge is never left to chance.

Between 1989 and 1998 the job of selecting the right man for the right job fell to Sir Thomas Legg,[3] who was Permanent Secretary in the Lord Chancellor's Department before our justice system was 'nationalised'. Legg selected the judges for the major show trials of the early nineties, including Mr Justice Tucker for R v Asil Nadir (1992-93); and Legg again selected Tucker for R v Elizabeth Forsyth, Asil Nadir's private banker in 1996.

For R v Asil Nadir (2011-12) it would have been Sir Suma Chakrabarti, a career civil servant, who was Permanent Secretary at the Ministry of Justice between 2008 and 2012 and is now President of the European Bank for Reconstruction and Development. He would have been involved in the decision to appoint Mr Justice Holroyde. Unlike Legg, who in keeping with the rules of the Lord Chancellor's Department was a barrister of at least seven years standing and called to the bar in 1960, Chakrabarti is by training and practice an economist. The new Ministry of Justice has no longer a rule about the training of its permanent secretary. The appointment of Mr Justice Holroyde was clearly a good one, for as one legal observer put it:

> *I saw how hard he [the trial Judge] had strained to rule against the abuse of process submissions - that he was a man on a mission and that was to see Mr Nadir tried by a jury.*

3 Legg is discussed in John Burnes' 'Joseph K and the spooky launderette' in *Lobster* 36 – ed.

The Attorney General gets involved

On 2 September 2013, the Attorney General, Dominic Grieve QC MP, wrote to Lord Maginnis of Drumglass as follows:

Dear Ken

Asil Nadir

Thank you for your letter of the 25th August. I thought I would answer in Oliver's absence.

I accept that there is nothing I can tell you that is going to get you to change your mind about the fairness of the Nadir trial and I am sorry to have to write in these terms to someone with as notable a career as true and loyal Parliamentarian as you. But it is clear that you have not accepted what has already been explained. It has been explained to you that it is not open to me to confirm or deny that there were any PII applications in Nadir's trial. You believe there were. It has been explained to you even if there had been PII applications, the trial judge would not have allowed the trial to continue unless the trial was fair.

In response to your letter I would make these three points. First, that you will have received a separate letter responding to the FOI request you make. Secondly that on the basis that I cannot confirm or deny that any PII applications were made, your request that I identify Ministers who signed certificates cannot be answered either. Thirdly, you write that it is alleged that I have reneged on a deal to return Nadir to Turkey. I can assure you that I have had absolutely no involvement in any decision on where Nadir should serve his sentence.

Finally I am concerned that your letter and its claims appear to suggest that we have in this country a corrupt and perverse criminal justice system. I firmly believe that this is not the case.

Yours ever

Dominic

Rt Hon Dominic Grieve QC MP

Attorney General

The three points of the Rt Hon Dominic Grieve QC MP

> *First, that you will have received a separate letter responding to the FOI request you make.*

This is outside the remit of this article and therefore cannot be commented on.

> *Secondly that on the basis that I cannot confirm or deny that any PII applications were made, your request that I identify Ministers who signed certificates cannot be answered either.*

This confirms the Kafkaesque charade of the criminal justice system already put forward by the Solicitor General. Even when so much of this information is in the public domain government ministers continue to hide behind platitudes.

> *Thirdly, you write that it is alleged that I have reneged on a deal to return Nadir to Turkey. I can assure you that I have had absolutely no involvement in any decision on where Nadir should serve his sentence.*

Chris Grayling MP, the first non-lawyer to serve as Lord Chancellor since the Earl of Shaftesbury in 1672-3, has refused to allow Nadir to serve his sentence in Turkey, even though Nadir fulfilled all the criteria.

Three boxes of evidence

> *To ask Her Majesty's Government whether they intend to apply for public interest immunity certificates for the three boxes of documents relating to the Asil Nadir case recently found by the Serious Fraud Office; and, if so, under what legal mechanism. [HL5943]*

On 28 February 2013, it was reported in *The Times* that three boxes of evidence relating to Asil Nadir's original trial in 1993 had been found by the SFO when they were clearing offices.

The contents of the three boxes relate to the bribery allegations, concerning the original trial judge Mr Justice Tucker, and the activities of Michael Francis and Wendy Welsher, the two known police informants.

Although the Serious Fraud Office has argued that the documents are irrelevant to the trial of Asil Nadir, which ended in August 2012, they still intended to apply for Public Interest Immunity (PII) Certificates.

Anthony Scrivener QC's view was reported in *The Times* on 1 March 2013:

> '….. there should be openness rather than secrecy about the "mysterious re-appearance" of the long-lost evidence.
>
> 'Most people have forgotten, but the SFO has already had to make a statement to parliament explaining the bribery allegations were entirely false,' said Mr Scrivener who was named in court in 1993 as a party to the bribery plot.
>
> 'The time has come for the SFO to tell us the whole truth. I would like them to explain where these boxes came from, who filled them with relevant documents and who failed to disclose them to the defence.'

Mr Scrivener, Mr Justice Tucker and Assistant Commissioner Wyn Jones subsequently received apologies for being implicated in the bribery allegations.

The bribery claims had originated with Michael Francis, a paid police informant, but the SFO later had to admit that they were 'spurious and groundless'. Mr Scrivener, a former chairman of the Bar Council, said:

> 'I took the view back in 1993 that Michael Francis's allegations were completely false and had been fabricated to cover weaknesses in the prosecution case.[4]
>
> There was questionable conduct 20 years ago and it seems to have persisted right up to the present day.'

It is believed the boxes were found during November 2012, too late to be included in Asil Nadir's trial, but their finding was not disclosed until February 2013. The Serious Fraud Office have refused to comment.

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4 Francis' affidavit is at <http://jancom.org/DocumentsPDF/Affidavit%20-%20Francis%20230993.pdf>.

On 10 April 2013, Mr Justice Holroyde sent the following NOTE TO THE PARTIES in R v Asil Nadir (2011-12):

> *I am grateful to the parties for their written submissions as to whether I have any jurisdiction to accede to the prosecution's request for my assistance.*
>
> *I entirely understand why the prosecution wish to have that assistance. However, I can see no grounds on which to alter the preliminary view which I expressed in my earlier note of the 27th February. Indeed, the submissions of counsel on both sides confirm that I am* functus officio*. I am unable to accept the submission of the prosecution that I am entitled nonetheless to assist as opposed to making any order: it seems to me that if I have no jurisdiction to make any order, then any view I expressed would be mere opinion. I cannot see any basis on which it would be proper for a trial judge, once functus officio, to offer his opinions as to the post-trial actions of either party.*
>
> *I therefore confirm my view that I am functus officio, and cannot assist further.*
>
> *My previous Note indicated the limits of what I had read at that stage. For the avoidance of doubt, I have read no further material since that date, other than the submissions of the parties as to my jurisdiction.*

The judge feels he does not have the jurisdiction to review a PII on the re-appearance of the 'lost' boxes.

In the correspondence involving the Advocate General for Scotland, Rt Hon Lord Wallace of Tankerness, QC, the Solicitor General, Oliver Heald QC MP, and the Attorney General, Dominic Grieve this issue is never been mentioned, probably because they believe their explanation that they '*…..cannot confirm or deny that any PII applications were made'* will suffice, even regarding *new* evidence after the trial process has been completed.

Political interference in British trials

The criminal justice system has been corrupted over the years by overt political interference, as have other institutions

central to the fabric of British society, such as health and education; but it is not in itself corrupt. It has been hamstrung by rules, regulations and laws imposed from Europe, by countries that have no tradition of Common Law or Habeas Corpus and where secret justice has been the norm and not the exception. But with the rise of Thatcher and the great show trials of the early nineties related to the clandestine Anglo-American arming of Iraq – Euromac,[5] Ordtec, Matrix Churchill, Elizabeth Forsyth, Asil Nadir – the iron fist of political control has been worthy of anything that has come out of Eastern Europe.

In those trials evidence was not properly investigated, it was suppressed, it was manufactured and PII was imposed. Witnesses were not called or barred from attending the trial; allegations of corruption were made without evidence; reporting restrictions were imposed and evidence was heard in secret. Juries were misdirected.

Sir Richard Scott, Vice-Chancellor of the Supreme Court said in 1996:

> *As to documents which appear to have the potential to assist the defence, could a situation ever arise in which disclosure could be refused on PII grounds? This is, to my mind, a fundamental but conceptually simple, question. The answer to it, both on authority and on principle should, in my opinion, be a resounding 'No'. In the context of a criminal trial how can there be a more important public interest than that the defendant should have a fair trial and that documents which might assist him to establish his innocence should not be withheld from him.*

PII should only be used when there is a clear case of the national interest being compromised. It should not be used to conceal wrong-doing by individuals or the government or to hide evidence that might assist the defence. This abuse of PII in R v Asil Nadir (2011-12) has yet to be rectified.

As William Gladstone said:

Nothing that is morally wrong can be politically right.

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5 See Appendix 2 below.

POSTSCRIPT

On 18 November 2013 Lord Maginnis of Drumglass asked an oral question of Her Majesty's Government, which led to the following exchanges:

Public Interest Immunity Certificates

Question

2.45 pm

Asked by **Lord Maginnis of Drumglass**

> *To ask Her Majesty's Government on how many occasions since 2010 Public Interest Immunity certificates have been granted in cases of alleged fraud; and how many certificates were granted in each case.*

18 Nov 2013 : Column 724

The Advocate-General for Scotland (Lord Wallace of Tankerness) (LD): *My Lords, public interest immunity, or PII, certificates are ministerial instruments used in legal proceedings where the disclosure of sensitive material would cause a real risk of serious prejudice to an important public interest. Although applications for PII have been made in criminal fraud cases since 2010, I am not aware of any PII applications relating to fraud cases that involved ministerial PII certificates.*

Lord Maginnis of Drumglass (Non-Afl)***:*** *My Lords, is not the noble and learned Lord's Answer relevant virtually only to the case of Asil Nadir? Is it not ridiculous, and a mockery of British justice, that Asil Nadir came back to this country with all the evidence to clear his name, and that the Serious Fraud Office sought to hide behind more than 35 public interest immunity certificates? The SFO used the international status of the Turkish Republic of Northern Cyprus to avoid going there to examine the books although, 20 years previously, it had already been told by the administrators for Polly Peck that the audited books were in order. Is this not a contradiction of British justice?*

Lord Wallace of Tankerness: *My Lords, I readily acknowledge the determination with which the noble Lord has pursued these matters. As I have previously indicated to him, it is a long-*

standing convention that applications for PII certificates are neither confirmed nor denied. Indeed, I gave the noble Lord a Written Answer earlier this year in which I set out the reasons for that.

Immediately before coming into your Lordships' House, I inquired about the status of the Turkish Republic of Northern Cyprus. It is my understanding that these issues were raised during the trial of Asil Nadir and that Foreign and Commonwealth Office officials were examined on the matter. As a matter of general law, the use of a PII to prevent disclosure of sensitive material does not render any trial unfair. Whether materials are or are not disclosed is not a decision for Ministers or for the prosecution; it is the decision of the trial judge. The trial judge will not allow a PII claim to stand if to do so would render the trial of the defendant unfair.

Lord Carlile of Berriew (LD): *Does my noble friend agree that the PII ministerial certificates should be used sparingly, if only because they are made without anyone representing the interests of a defendant being present? That places a great burden on the trial judge, who has to second guess what the defence is likely to say on certain issues. It also means that the defence is unable to answer allegations which can easily be made, but which may be incorrect.*

Lord Wallace of Tankerness: *My Lords, as I indicated, in the case of criminal fraud trials since 2010, I am not aware of any case where a ministerial PII certificate has been advanced. I acknowledge that PII certificates are more commonly used in civil cases, and I accept my noble friend's point, that that should proceed only after very careful consideration.*

18 Nov 2013 : Column 725

Lord Beecham (Lab): *My Lords, is not the SFO—the Serious Fraud Office—a seriously failing office? What expectations does the noble and learned Lord have of it improving on its rather poor record thus far?*

Lord Wallace of Tankerness: *My Lords, I think that that goes slightly wide of the question asked by the noble Lord, Lord Maginnis. From Written Statements which have been made in the*

other place by the Attorney-General, and which I have placed in your Lordships' House, I know of a number of steps have been taken recently to improve the operation of the Serious Fraud Office. However, I will ensure that the comments made by the noble Lord are drawn to the attention of my right honourable and learned friend, the Attorney General.

Appendix 1: The Bourn Report

Sir John Bourn was made Auditor General on Margaret Thatcher's personal instruction in 1988 and remained in office until January 2008, when he was just short of his 74th birthday, which is well past Civil Service retirement age. Bourn led a National Audit Office inquiry into corruption in the Al Yamamah arms contract with Saudi Arabia. The Public Accounts Committee of the House of Commons, who oversee the work of the National Audit Office, were not allowed to see the report and it has been concealed ever since. The report has been suppressed on the grounds of national security/national interest, and also on the grounds of damaging British industry, because if the true facts were revealed, the companies would lose business. These allegations of corruption and bribery led to an SFO investigation in 2004, but, in a clear case of political interference in the judicial process, it was closed in 2006, after intervention from then Prime Minister Tony Blair, on grounds of public interest, amid concerns that relations with Saudi Arabia were being harmed. In August 2013 the issue surfaced again when the SFO admitted to losing 32,000 pages of data and 81 audio tapes linked to the investigation.

It is no coincidence that Mr Justice Tucker was selected for the trial of Elizabeth Forsyth, the former chairman of South Audley Management, the private investment company of the Nadir family. Thomas Legg clearly needed a 'safe pair of hands' to ensure that at least something positive came out of the raids on South Audley Management and Polly Peck to justify the investigation by the Serious Fraud Office. With Asil Nadir in exile, and therefore no chance at that time of continuing his

trial, who better than Nadir's trial judge, smarting from the accusations against him, to ensure that only the evidence the Serious Fraud Office wanted was presented to court, no calamitous statements were made by uncontrollable defence witnesses and that the trial proceeded safely and soundly to a guilty verdict.

Appendix 2: The Euromac trial

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.

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. Mr Daghir was Euromac's managing director. He was an Iraqi and a UK citizen. 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'. Mr Toufic Amyuni was Euromac's sales manager and consultant. He held a Lebanese and a United States passport. He was a co-defendant at the trial but was acquitted by the jury.

Mr Alan Moses QC was retained to lead for the Crown in the prosecution.

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.

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.'

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. Both appealed, with leave, against conviction.

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.

In the event, the appeal was decided in the defendants' favour on the first ground put forward.

Geoffrey Robertson QC, for the defence, said Judge Neil Denison gave jurors at the trial in June 1991 the impression they could still convict if they found the 40 electrical capacitors

at the centre of the case were for other military, but non-nuclear use. This was a 'material defect' in the summing-up because the prosecution had 'nailed its case to the nuclear mast', he told Lord Justice Taylor, the Lord Chief Justice, Mr Justice Hutchison and Mr Justice Buxton.

After the appeal Ali Daghir's business and family life was left in tatters. Because the Court of Appeal quashed his conviction because the trial judge's summing-up was badly phrased and did not go on to hear the new evidence, he was not entitled to compensation. Without compensation he had been forced to put his house up for sale and his wife, the mother of his four children, had left him.

In a letter from the Customs and Excise's legal department, dated 27 May 1993, just before the appeal, it suggested hearing the technical grounds first, and saving the fresh, potentially embarrassing, evidence until later:

> 'Mr Moses QC feels that all the grounds of appeal other than the question of the fresh evidence be dealt with first. If the court were to rule in the appellant's favour on any of the issues in a way that disposed of the appeal, it would be unnecessary to deal with the question of fresh evidence.'

That is what happened. He was freed on a technicality. The new evidence, a conclusive report, from the United Nations nuclear inspection team, that the capacitors were not the same as those intended to detonate Iraq's atomic weapons, and that he had been set up in a 'sting' operation, was not heard. Therefore he had no automatic right to compensation.

As his solicitor, Lawrence Kormonick, said in April 1996:

> 'He has been in prison for 15 months, unemployed for several years, has lost his company, cannot travel abroad and has had this hanging over him for six years.'

Even after winning his appeal Ali Daghir's life was totally destroyed.

Gerald James:

> 'Euromac was possibly the most transparent frame-up of them all. The nuclear triggers trial, as it came to be

known, was the result of an eighteen-month joint UK-US Intelligence operation literally to persuade managing director Ali Daghir against his better judgment to export capacitors/detonators to Iraq, allegedly for Saddam Hussein's nuclear programme.

Crucial to the prosecution's case was evidence given by Peter Gall, former senior executive at the export licensing unit at the DTI. 'An export licence would not be granted for the supply of any equipment which would significantly enhance the military capability of Iraq.' he said.

It transpired that not only had Daghir resisted the deal and been pushed into it by his US supplier Dan Supnick, acting in concert with the CIA, but that the capacitors were below standard for detonating weapons, nothing more than might be used by a professional photographer to power his flash-lights.

Before the truth was made public, Margaret Thatcher had shown her approval of the way her team had gone about its business in a letter to Brian Unwin, chairman of British Customs:

'May I ask you to pass on my warm congratulations to all those engaged in the operation to prevent the illegal export to Iraq of components for a nuclear weapon. It must have required the highest professional standards, as well as great patience and skill, and the whole nation has reason to be grateful to those concerned.'

Alan Moses QC, who was also the prosecuting counsel in the Matrix Churchill trial, did not find his life destroyed after losing the appeal. His dexterity in getting the convictions quashed on a technicality rather than the hearing of new evidence, not only suppressed potentially embarrassing evidence but saved the nation a good deal of money in compensation. He was made a High Court Judge (Queen's Bench Division) in 1996 and appointed as a Lord Justice of Appeal in 2005.

The author

Martin Tancock was born, brought up and educated in Wessex. He is by trade a business analyst and systems designer and by profession a computer systems project manager. Having been forced, through ill-health, to retire early, he retreated to Cyprus where he re-invented himself as a web site designer and developer. Although never believing in the guilt of Asil Nadir, it was not until being commissioned to develop the JANCOM.org web site and analysing hundreds of documents, relating to the destruction of Polly Peck and the trials of Elizabeth Forsyth and Asil Nadir, that Martin came to realise that these were just part of a far greater conspiracy which reaches back to the 1980s, and still clouds the judgement and influences the actions of politicians, civil servants and judges today.