19.4.82

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

Cause No. 108 of 1982

to be read in light of Court of Appeals Late Judgment.

In the matter of the Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order 1978

and

In the matter of the Confidential Relationships (Preservation) Law 1976 as amended

and

In the matter of the Grand Court (foreign Process) Rules 1977

and

In the matter of the Extradition Act 1870

and

In the matter of proceedings pending in the United States District Court for the District of Columbia

BETWEEN: THE UNITED STATES OF AMERICA

AND: ROY R. CARVER
JOSEPH C. LEMIRE
LIONEL W. ACHUCK
JON T. STEPHENS
INTERCONEX INC.

Norman Hill Q.C. for applicant.
John Martin for Attorney General.

JUDGMENT

This is an application on behalf of the United States of America to give effect to a request from the United States District Court for the District of Columbia for assistance in obtaining evidence in criminal proceedings which have been instituted in that Court pursuant to the Evidence (Proceedings in other Jurisdictions) (Cayman Islands) Order 1978 (the Order). The defendants in the criminal proceedings before the requesting court are Roy R. Carver, Joseph C. Lemire, Lionel W. Achuck, Jon T. Stephens, and Interconex, Inc.

The summons to give effect to the request is in the

following terms:

> "Let all parties concerned attend the Chief Justice in Chambers the day of March 1982 at 9:30 o'clock in the forenoon on the hearing of an application on behalf of the United States of America for an Order that
>
> 1. Woodword Terry, Registrar of Companies, Cayman Islands.
> 2. Custodian of Records, Registrar of Companies Cayman Islands.
> 3. Roger Corbin, Anglo-Dutch Insurance Company - Grand Cayman.
> 4. Custodian of Records, Anglo-Dutch Insurance Company - Grand Cayman.
> 5. David Challice, Barclays Bank International Limited - Grand Cayman.
> 6. Custodian of Records, Barclays Bank International Limited Grand Cayman.
> 7. Cyrus Regnart, Bank of Nova Scotia - Grand Cayman.
> 8. Custodian of Records, Bank of Nova Scotia- Grand Cayman
>
> be examined on oath, viva voce, before Honourable Gerard D. Reilly; AND FOR AN ORDER compelling the production of the documents referred to in the Letter of Request by each of the said witnesses and to compel the said witnesses to prove the matters, transactions and accounts therein recorded on all matters raised by the indictment and matters directly related thereto;".
> AND FOR an order that the Honourable Gerard D. Reilly, be appointed Commissioner and that the said examination be video taped.
> AND FURTHER FOR AN ORDER pursuant to Section 8 of the Evidence Law 1978 authorizing John D. Arterberry, Attorney, United States Department of Justice or any other lawful representative of the United States of America, to inspect and take copies of all entries in any ledgers, day books, cash books, account books or correspondence and in any other books used in the ordinary course of business of Barclays Bank International Limited, Grand Cayman, The Bank of Nova Scotia Limited, Grand Cayman, Anglo-Dutch Insurance Company, Grand Cayman and the Registrar of Companies; Cayman Islands relating to all the matters transactions and accounts raised by the indictment and matters transactions and accounts directly related thereto.".

Under United States Law, it is unlawful for any person to devise a scheme to defraud anyone of anything of value. Such an act is made punishable by Title 18, United States Code, Section 1343, if a facility of interstate communication is used to further the scheme to defraud. Pursuant to Title 18, United States Code, section 2314, it is a violation of federal law to transport in interstate or foreign commerce more than $5,000. if one knows that sum to have been taken by fraud.

Title 18, United States Code, Section 371, makes it unlawful for two or more persons to conspire to commit any offence under the laws of the United States, and commit any overt act in furtherance thereof.

The indictment charges six offences variously under Title 18 sections 1343 and 2314. There are no corresponding offences in these Islands although there are offences relating to fraudulent

activities. To do what is alleged against the defendants as the substantive offence would not be an offence in these Islands. A seventh count charges a statutory offence of conspiracy to commit offences against Title 18 sections 1343 and 2314. As the latter acts would not be unlawful under our law a conspiracy to commit them would not be unlawful.

I make this point by the way as there was no objection based on the ground that the request related to the taking of evidence in relation to criminal charges unknown to our law. Presumably, if the nature of the offence in respect of which assistance is sought is not repugnant to the generally accepted concepts of morality and justice in these Islands then the request will be entertained. But I am of the opinion that this court must reserve its position to decline to afford assitance where the request relates to offences unknown to our law and repugnant to our concepts of morality and justice e.g. any offence in furtherance of aparthied in South Africa.

As it is, nothing will turn on the fact that the indictment in this case relates to offences with no counterpart in our law.

The requesting court asks this court to make orders pursuant to the Evidence (Proceedings in Other Jurisdictions) (Cayman Islands) Order 1978 and Confidential Relationships (Preservation) Law as amended to permit the following witnesses to give evidence and to produce documents on all matters raised by the indictment and matters directly related thereto.

WITNESSES AND DOCUMENTS TO BE PRODUCED

1. Woodward Terry, Registrar of companies, Cayman Islands,

   Documents - any and all records relating to the formation and ownership of Redcon Limited, International Resource Management Consultants, and Winhall Insurance Company.

2. Custodian of Records, Registrar of Companies, Cayman Islands.

Documents - any and all records relating to the formation and ownership of Redcon Limited, International Resource Management Consultants, and Winhall Insurance Company.

3. Roger Corbin, Anglo-Dutch Insurance Company - Grand Cayman.

Documents - any and all records relating to the formation and ownership of Redcon Limited, International Resource Management Consultants, and Winhall Insurance Company.

4. Custodian of Records, Anglo-Dutch Insurance Company, Grand Cayman.

Documents - any and all records for the period from January 1, 1976, to the present relating to:

(a) Winhall Insurance Company

(b) Interconex, Inc.

(c) Lionel W. Achuck

(d) Jon T. Stephens

5. David Challice, Barclays Bank International Limited - Grand Cayman.

Documents - any and all records relating toany and all accounts held by International Resource Management Consultants.

6. Custodian of Records, Barclays Bank International Limited, Grand Cayman.

Documents - any and all records relating to any and all accounts held by International Resource Management Consultants.

7. Cyrus Regnart, Bank of Nova Scotia, Grand Cayman.

Documents - anyandall records relating to any and all accounts held by Redcon Limited.

8. Custodian of Records, Bank of Nova Scotia, Grand Cayman.

Documents - any and all records relating to any and all accounts held by Redcon Limited.

Several points can be made at this stage.

First, it is not open to any party or, indeed, to anyone

other than a witness himself, to apply to have the secrecy restrictions imposed by the Confidential Relationships (Preservation) Law lifted in relation to a witness to be called in proceedings. It is the person who indends or is required to give evidence who is required to make application under section 3A of that Law where the evidence relates to confidential information within the meaning of that Law. No one else can. In the event that any witness is required to give evidence, whether pursuant tc a subpoena, summons, order pursuant to the Order or otherwise, and that exposes him to divulging confidential information then he should apply immediately for directions pursuant to section 3A.

Next, it is conceded that by virtue of section 9(4) of the Schedule to the Order (Schedule) no order can be made pursuant to the Order binding on the Crown or on any person in his capacity as an officer or servant of the Crown. That rules out any order relating to the Registrar of Companies (1) or the Custodian of Records, Registrar of companies (2). Both are sought to give evidence in their capacity as an officer or servant of the Crown. It is understood that, subject to the Confidential Relationships (Preservation) Law and no doubt to any other law relating to privilege, the Registrar of companies is prepared to give evidence at the trial or before any examiner appointed. I can take judicial notice of the staff list of these Islands and of the fact that there is no officer with the title of "Custodian of Records, Registrar of Companies". As there is no such legal entity, quite apart from section 9 (4) of the Schedule no order could be directed to such a fictitious officer. In any event, the Registrar of Companies is de facto custodian of all records in his department. It follows that, subject to the Confidential Relationships (Preservation) Law and any other law relating to privilege, there is no obstacle to obtaining the Registrar of companies as a witness. However, it could be that the Confidential Relationships (Preservation) Law may prove a barrier to obtaining some of the evidence sought. That can only be determined when application is made.

The final point to be made at this stage is that almost all the

documents sought to be produced and, by inference, almost all the evidence sought to be obtained from the intended witnesses relate to the affairs, indeed the confidential affairs, of persons who are not parties to the criminal proceedings before the requesting court. The only exceptions are records from 1 January 1976 relating to Interconex Inc. Lionel W. Achuck and Jon T. Stephens said to be in possession of the Custodian of REcords, Anglo-Dutch Insurance Company (4).

As to the procedure for applications of this nature, my view is that O70 (in conjunction with the rules specified therein of O 39) of the English Rules of the Supreme Court 1965 apply by virtue of section 20 of the Grand Court Law read with rule 62 of the Grand Court (Civil Procedure) Rules. The Grand Court (Foreign Process) Rules do not appear to be appropriate.

Under O 70 application is made ex parte. However, in this case the Attorney General was served by the applicant and invited to appear. Learned Counsel for the Attorney General generally supported the application in the interests of furthering the cause of justice before the requesting court. That, of course, is a perfectly proper attitude to adopt but it deprived me of the stronger counter arguments which I would have valued in reaching the right decision. As it was, throughout the hearing I raised questions of law and propriety which were causing me concern if I were to accede to the application. After the initial hearing, which came on at very short notice to accommodate learned counsel for the applicant and his client, I recalled counsel to address me further on points which had arisen in the course of my deeper researches into the matter. While I am very grateful for the thorough and helpful presentation by learned counsel for the applicant, and his ready concession in relation to section 9(4) of the Schedule, he has not, as will appear, satisfied me that it would be right to accede to the request in its present terms.

In England the

/ general principles which should be followed in relation to a request from a foreign court for assistance in obtaining evidence for the purposes of proceedings in that court is that the English Court

will ordinarily give effect to such request so far as is proper and practicable and to the extent that is permissible under English law. This principle reflects judicial and international commity and it conforms with the of the Hague Convention and the 1975 Act as it conformed with the spirit of the former statutes. It is the duty and the pleasure of the English Court to do all it can to assist the foreign Court, just as the English Court would expect the foreign Court to help it in like circumstances. Just as the English Court ought to give full faith and credit to a foreign judgment, so should it give full faith and credit to the request of a foreign Court for evidence to assist its proceedings.

In dealing with a request for evidence from a foreign Court, the English Ccurt has first to decide whether it has jurisdiction to make an order to give effect to the request, and secondly, if it has, whether as a matter of discretion it ought to make or refuse to make such an order. As a matter of jurisdiction, in the ordinary way and in the absence of evidence to the contrary the English Court should be prepared to accept the statement of the foreign Court in its request that the evidence is required for the purposes of civil or criminal proceedings, as the case may be, in that court. On the other hand, the form of the letter of request is not conclusive; the Court must examine the request objectively by the nature of the testimony sought, and it has to look at the substance of the matter, but it may have regard to what was said in the foreign Court when the request for evidence was issued. If there is any doubt about the matter, the English Court may allow the parties to refer back to the foreign Court or Judge who issued the request for evidence.

As a matter of discretion, again in the ordinary way, the English Court should exercise its discretion to make the order asked for unless it is satisfied that the application would be regarded as falling within the description of frivolous, vexatious or an abuse of the process of the Court.

The English Court has power to accept or reject the foreign

request in whole or in part, whether as to oral or documentary evidence; and it can and should delete from the foreign request any parts that that are excessive either as regards witnesses or as regards documents. The English Court will act on the principle that it should salve what it can, but should decline to comply with the foreign request in so far as it is not proper or permissible or practable under English law to give effect to it. The English Court, moreover, ought not to embark on the process of restructuring or re-casting or re-phrasing the foreign request so that it becomes different in substance from the original request. The Court has no power so to modify the original foreign request as to substitute a different category of documents for the category which has been requested by the foreign Court.

These principles are culled from O 70/1 - 6/4 - 6/6 (The Supreme Ccurt Practice 1982) where the supporting case law is alse cited. Those principles apply in this jurisdiction.

This court must also take account of the Confidential Relationship (Preservation) Law and its purpose. While this country holds itself out as a tax haven it does not aim to become a haven for illicit spoils. In particular, this court will give all the assistance the law allows in bringing to justice criminals who are guilty of fraud or theft. But also it must insist that a proper case be made out for the release of protected information where the law allows such release. Further the court will not allow process under the Order to be used as a means of invading sovreignty.

It is convenient to observe here that only the provisions of the United Kingdom Evidence (Proceedings in Other Jurisdictions) Act 1975 (as extended to these Islands by the Order) which deal with evidence in civil and commercial matters are designed to give effect to the 1968 Hague Convention on the taking of Evidence abroad in Civil or commercial Matters (Command 3991 of 1969). That convention applies only to civil and commercial matters and its mandatory provisions have no bearing on evidence in criminal matters. Section 5 of the Act and the other provisions dealing with evidence in criminal matters are additional to those designed to give effect to the convention and have as their purpose the replacement of the

repealed provisions relating to evidence in criminal matters contained in the enactments set out in the Schedule.

I have examined the order made by the Supreme Court of Bermuda in relation to witnesses whose evidence is required in the same criminal case by the requesting court. The point should be made that there are substantial grounds for distinguishing the Bermuda order and the order sought here. The most important difference is that the Bermuda order was a consent order, the witnesses being present and represented at the hearing before the learned Chief Justice and consenting to the order sought. It would also appear that the documents sought in the Bermuda application were specified with greater particularity. It may also be of importance that in Bermuda there is no law corresponding to our Confidential Relationships (Preservation) Law but I need not examine that aspect.

Against the background of these general principles the application can now be considered.

I will take first the application for the "further" order pursuant to section 8 of the Evidence Law.

Part of it should be rejected without much argument, namely, that part of it relating to the Registrar of Companies. The Registrar of Companies does not carry on banking business and is not, therefore, a bank. Section 8 relates only to a banker's book.

However, in my view, the whole of this part of the application should be rejected. In the first place it does not constitute any part of the request by the requesting court. And further, if it did, section 5 (1) (c) of the Schedule would preclude my acceding to it. Section 8 of the Evidence Law makes provision for an order enabling a party "to inspect and take copies of any matter in a banker's book". Section 5 (1) (c) of the Schedule provides:

> "No order under section 2 above shall make provision otherwise than for the examination of witnesses, orally or in writing, or for the production of documents.".

That confines orders to paragraphs (a) and (b) of section 2(2) of the Schedule and precludes any order for the inspection of documents or the taking of copies of them.

It was argued that such an order was implicit in the request. In my view the request was wholly silent on any such order and in no way can I read it as conveying an implicit request for such an order. In any event, I could not make such an order because of section 5(1) (c).

It was also argued that the reason for this part of the application was not to obtain copies of exhibits for the criminal case but to enable the prosecuting attorney todetermine what documents he would require the witnesses from the banks to identify and produce before the examiner for the purpose of the criminal proceedings before the requesting court. That clearly amounts to a"fishing expedition" which, on ample authority, this court should not permit.

There are several other grounds on which I feel obliged to reject this part of the application. They are based on the wide ranging nature of the order sought with no safeguards for preventing access to confidential information irrelevant to the criminal proceedings, the fact that the examination would be of accounts of persons not parties to the criminal proceedings, the absence of those persons and the banks from these proceedings and other grounds to be found, inter alia, in paragraphs 126 and 128 of volume 3 of the 4th edition of Halsbury's Laws of England, but it is unnecessary to elaborate further on this aspect. At some time it may have to be determined whether "a legal proceeding" within the meaning of section 8 of the Evidence Law is confined to a legal proceeding in these Islands and, if so, whether that would include an examination of a witness pursuant to the Order, but I need not go into that now. I should say in passing that an order under section 8 of the Evidence Law must be directed to a specific person and not be at large. It cannot give the person to whom it is addressed a right to delegate his power e.g. to

"any other lawful representative".

I turn now to that part of the application relating to the "Custodian of Records" (4, 6, 8) of the two banks and Anglo-Dutch Insurance Company. So far as this court is concerned, the "Custodian of Records" is not a legal entity or an identifiable person to whom to direct an order under the Order. It is too amorphous. It is not even an identifiable office so far as appears from the record. It is not even as tangible as e.g. "the Secretary of the A Company Ltd." which could be identifiable as every company has to have a secretary. It is as if the order would have to be addressed to that person who for the time being has custody of the records of the company. In my view, the court cannot do this. In any case,where the letter of request only describes a witness by his office, e.g., "Secretary or other proper officer of Co. Ltd.", a paragraph should be added in the affidavit in support of the application to the effect that the deponent has ascertained that X is the proper person to give the desired evidence, or produce the documents, and that he is willing to do so - See Queen's Bench Master's Practice Forms, The Supreme Court Practice 1982 Vol. II Form PF 152 p 105. That has not been done here and I suspect cannot be done because there is no such substantive office in the companies concerned. It was argued that this could not be done in the instant case because of the Confidential Relationships (Preservation) Law. As I understand it, that Law applies only to confidential information as defined therein and that does not extend to the identity of the holder of any specific office in a company.

In any event, the range of documents these "custodians" are asked to produce is far too widely drawn. In the request the "custodians" in the two banks (6, 8) are required to produce "any and all records relating to any and all accounts held by [two named legal entities who are not parties to the criminal proceedings]". In the case of the "custodian" in Anglo-Dutch Insurance Company (4) he is required to produce "any and all records for the period from January 1 1976 to the present in relation to [four named legal entities, one of whom is not a party to the criminal proceedings]. The summons trims this wide range with the words "to prove the matters, transactions and accounts

therein recorded on all matters raised by the indictment and matters directly related thereto". How far the summons can trim the terms of a request from a requesting court is a matter for argument but even thus trimmed the request is far too wide. How is the witness to determine what documents in the wide range sought relate "to all matters raised by the indictment [which he probably will not see and would probably not understand if he did] and matters related thereto"? It is not for a witness to exercise judgment on what documents relate to any particular matter.

Section 2 (4) (b) of the Schedule provides:

"(4) An order under this section shall not require a person -

.....

(b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.".

That provision requires the documents to be produced to be identified with particularity e.g. "the letter reference number ....from A to B dated .....". The description in the request as trimmed by the summons falls well short of compliance with this provision. Unless the court is strict about compliance with this provision it could lead not only to "fishing expeditions" but abuse.

While on this subject it may be pertinent to remark in passing that it would appear to raise serious matters of public concern if a court were to accede to requests that bankers' books (ledgers, journals and and the like), which cannot be conveniently "edited" in connection with any particular matter, being put in evidence in any court, particularly where that court is a foreign one and the bankers' books will be transported out of the jurisdiction and control in this jurisdiction is lost. The grave inconvenience to bankers and the public that would be occasioned thereby springs readily to the imagination. It may well be that it was for this reason, so far as domestic courts are concerned, that section 7 (1) of the Evidence Law makes provision with regard to the proof of entries in bankers' books. It may also well be that today many of

"books" and accounts are computerised and do not exist in bound volumes which would further confuse and confound the position.

If I am wrong in my view about the application as it relates to the "Custodian of Records", then the position with regard to those "custodians" would correspond to the position of the named officers in the institutions concerned which I will now now turn to.

The positon of the two bank officials, namely, David Chalice of Barclays Bank International Ltd (5) and Cyrus Regnart of the Bank of Nova Scotia (7), can conveniently be considered together. Both have declined to give evidence voluntarily.

Quite clearly from the record those bank officials are required to give evidence which would amount to divulging confidential information within the meaning of the Confidential Relationships (Preservation) Law. They are required to give oral evidence and produce documents most of which is, on the face of the record, protected by that Law. That in itself is no bar to making the order sought. The order could be made subject to the Confidential Relationships (Preservation) Law and the matter further examined on an application for directions under section 3A of that Law. However, the existence of that Law means that the court should scrutinize very carefully at this stage any application which exposes a witness to a breach of that Law.

In this case the evidence and documents sought relate to legal entities (Redcon Ltd. and International Resource Management Consultants) who are not defendants in the criminal case before the requesting court. In his affidavit, filed with the requesting court in support of the request Mr. Arterberry, a learned attorney with the United States Department of Justice, avers that these two companies are vehicles for the fraud alleged and are under the control of some of the defendants. One would not doubt the genuiness of the belief of such an officer that that is the case. But no evidence in support of that belief is before this court and there is no evidence even as to

the source of that information. In my view, a bare allegation of this nature is insufficient to justify this court treating these companies as being under the control of some of the defendants. Prima facie they are quite independent of any of the defendants and it is in relation to their accounts with the respective bank that these bank officials are expected to give evidence and produce documents. One must start with the premise that these companies are entitled to have the confidentiality of their accounts respected until a case is made out to justify otherwise.

The power this court is asked to exercise is a discretionary and one/should be exercised with great caution where it would mean lifting the veil of confidentiality on the normally confidential affairs of a person who is not a party to the proceedings and then only on sufficient grounds; and the order, if made, should be limited to relevant transactions. One can fairly equate the position with one where an order under section 8 of the Evidence Law is sought. The power to order inspection of the accounts of persons who are not parties to the litigation will seldom if ever, be exercised except where the account sought to be inspected is in form or substance really the account of a party to the litigation or is kept on his behalf so that entries in it would be evidence against him at the trial, and then only on / notice to the third party and to the bank. - Halsbury's Laws of England 4th ed. Vol. 3 para. 126 p. 95. Here an insufficient case has been made out and / there has been no notice to the parties concerned or the bank. Certainly, if the application were renewed under a new or supplemental request I would require notice to be given to the parties likely to be affected unless convinced to the contrary. The fact that the application is made ex parte initially does not prevent the court from requiring interested parties to have an opportunity of defending their interests.

The foregoing considerations would apply irrespective of the existence of section 7 (3) of the Evidence Law.

Again, with regard to these / two officers the documents they are

required to produce - "any and all records relating to any and all accounts held by [the two companies mentioned earlier]" - are not "particular documents specified in the order". The application is in terms far too wide even as trimmed by the summons itself - an aspect I have dealt with earlier.

There could, therefore, be no order to produce the documents in the terms set out in the application.

There is, however, the more compelling reason why these bank officials should not be ordered to appear as witnesses before an examiner. Section 7 (3) of the Evidence Law provides:

> "(3) No bank or officer of such bank shall in any proceedings before any court in which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under subsection (1), or appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a court made for special cause.".

In my view, it has not been made to appear that there is special cause. "Special cause" should appear from the documents before the court, usually in a supporting affidavit. It is not a matter for argument alone. It is not sufficient to aver that there is special cause. There must be some evidential foundation to support a case that there is special cause.

In this case, paragraph 5 of learned counsel's supporting affidavit states:

> "5. That special cause exists herein in view of the provisions of sections 7 and 8 of the Evidence Law, 1978, making it essential, in order to give effect to the said request of the United States District Court, that an order be made compelling the said witnesses who are the proper custodians of the relevant documents, to produce all relevant documents in their possession and to prove the matters, transactions and accounts therein recorded.".

To give effect to a request from a requesting court cannot, of itself, amount to special cause. To so hold would result in according more favourable treatment to parties to litigation in foreign courts than would be allowed to litigants in domestic courts. That could never have

been intended by that provision or the Order. It cannot be special cause merely because the evidence is required. Certainly it would be insufficient cause for me to order the attendance and physical production of bank books, having regard to the observations made earlier herein - particularly where the purpose is to reveal confidential matters concerning the affairs of persons who are not parties to the legal proceedings concerned.

For the foregoing reasons, I am of the opinion that, with all due respect to the requesting court, I am unable, on the information before me, to accede to the request in terms of the application in relation to the two bank officials (5, 7). In the event of a new or supplemental request supported by "special cause" I am of the opinion that the proper course may well be to give notice to the persons whose interests might be adversely affected by an order so that they can defend their interests - unless a case can be made out for dispensing with such notice.

In reaching my conclusion in relation to the bank officials I have not overlooked the cases cited to me, in particular, Bankers Trust Co. v Shapira and others (1980) 1 W.L.R. 1275 and Williams and Ors v Summerfield 1922 2 All ER 1334. I have found them useful and the principles therein are reflected in my earlier observations. It is important to bear in mind that in those cases the order of the court was made in relation to accounts of persons who were parties or prospective parties to the litigation concerned. Furthermore, those cases were concerned with the English provision of law corresponding to our section 8 of the Evidence Law. The equivalent of section 7 (2) of that Law was not under consideration.

I have, of course, also considered the case of Tournier v National Provincial and Union Bank of England Ltd. 1923 All E.R. Rep. 550, the relevant principles of which are also reflected in the text of this ruling.

There remains that part of the application which relates to

Roger Corbin, Anglo-Dutch Insurance Company (3).

Sections 7 and 8 of the Evidence Law have no application to this prospective witness. However, what has been said with regard to the production of documents in relation to the two bank officials and the "custodians" applies with equal force to the range of documents this prospective witness is asked to produce i.e. "any and all records relating to the formation and ownership of Redcon Ltd., International Resource Management Consultants and Winhall Insurance Company." It is difficult to believe that all the documents within this range would be relevant to the criminal proceedings before the requesting court e.g. the articles of association or bye-laws or the certificate of incorporation. Be that as it may, the application cannot be construed as being one for the production of "particular documents specified". No order for the production of documents in the terms sought can, therefore, be made.

Here again, the documents sought to be produced, many of which may be protected by the Confidential Relationships (Preservation) Law, relate to legal entities which prima facie have no connection with the defendants in the case before the requesting court. There is the bare assertion of Mr. Arterberry that they are under the control of some of the defendants without any evidential support - a matter I have dealt with earlier. My provisional view is that if a new or supplemental request were to be made confined to "particular documents specified" of a confidential nature concerning these legal entities notice should be given to them to allow such representations to be made on their behalf as might be in their interest to make.

Roger Corbin is also required to give oral evidence. Not all the considerations that apply to the two bank officials apply with equal force to this prospective witness. I am prepared to make an order requiring this witness to attend before an examiner to be examined orally on matters touching the indictment. He will be fully protected by the Confidential Relationships (Preservation) Law

and any other law relating to privilege except, in relation to the Confidential Relationships (Preservation) Law, as directions on application made under section 3A may otherwise provide.

Accordingly, I appoint the Honourable Gerard D. Reilly to be the Examiner, as requested in the summons, for the purpose of recording the evidence of Robert Corbin, Anglo-Dutch Insurance Company, pursuant to O 70 and O 39 rr 5 to 10 and r 11(1) - (3).

I am of the opinion that I cannot make an order that the examination be video-taped. This is alien to our procedure and it is apparent from the Order and O 70 r 5 that any order made should be for the examination of witnesses either orally or in writing or for the production of documents and not otherwise - subsection (2) and (3) of section 2 of the Schedule and O 39 rr 8 and 11.

This order does not extend to the production of documents by the witness Roger Corbin for the reasons given.

As the applicant may wish to renew the application in a revised form it would be inappropriate to set a date and place for the examination at this stage.

There will be liberty to apply for the setting of a hearing date and for directions generally including the giving of notice to interested parties, issue of a subpoena, witness expenses and other incidental matters.

It will be for the witness Roger Corbin to apply for directions under section 3A of the Confidential Relationships (Preservation) Law and the formal order drawn up and served on him will be couched in such terms as to appraise him of the necessity for so doing. In order