

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE: Request from the United Kingdom
Pursuant to the Treaty Between
the United States of America
and the United Kingdom on Mutual
Assistance in Criminal Matters
in the Matter of Joshua Chibi Dariye

Case No: 6:05MC39-REL 19DAB

**APPLICATION FOR ORDER PURSUANT TO THE TREATY
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND
TITLE 28, UNITED STATES CODE, SECTION 1782**

The United States of America petitions this Court for an Order, pursuant to Articles 1 and 8 of the Treaty between the United States of America and the United Kingdom on Mutual Assistance in Criminal Matters __ UST __ (Senate Treaty Document No. 104-2), 28 U.S.C. §1782, and its own inherent authority, appointing Kendell W. Wherry as Commissioner to collect evidence from witnesses and to take such other action as is required to execute the attached request from the United Kingdom made pursuant to the Treaty.

Respectfully submitted,

PAUL I. PEREZ
UNITED STATES ATTORNEY

By: Kendell W. Wherry.
Kendell W. Wherry 3-23-05
Assistant United States Attorney

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ORDER

Upon application of the United States, and upon review of the request from the United Kingdom seeking evidence under the Treaty on Mutual Assistance with the United Kingdom, and the Court having fully considered this matter,

IT IS HEREBY ORDERED, pursuant to the authority conferred by the Treaty between the United States of America and the United Kingdom on Mutual Assistance in Criminal Matters, __ UST__ (Senate Treaty Document 104-2), as well as 28 U.S.C. §1782 and this Court's inherent authority, that Kendell W. Wherry is appointed as a Commissioner of this Court and is hereby directed to execute the Treaty request as follows:

1. take such steps as are necessary, including issuance of commissioner's subpoenas, to collect the evidence requested;
2. provide notice with respect to the collection of evidence to those persons identified in the request as parties to whom notice should be given (and no notice to any other party shall be required);

3. disclose such copies of this Order as is necessary to accomplish the purposes of the request for assistance, notwithstanding that this Order may be filed and maintained under seal;

4. adopt procedures to collect the evidence requested, consistent with its use in the investigation or proceeding for which the United Kingdom has requested assistance, which procedures may be specified in the request or provided by or with the approval of the United Kingdom Central Authority under the Treaty;

5. seek such further orders of this Court as may be necessary to execute this request; and

6. certify and submit the evidence collected to the Office of International Affairs, Criminal Division, United States Department of Justice, or as otherwise directed by that office for transmission to the United Kingdom.

IT IS FURTHER ORDERED that, in collecting the evidence requested, the Commissioner may be accompanied by persons whose presence or participation is authorized by the Commissioner, including, without limitation, special agents of the Federal Bureau of Investigation and/or representatives of the United Kingdom.

UNITED STATES DISTRICT JUDGE

Dated: _____, 2005

COMMISSIONER'S SUBPOENA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TO: _____

I, Commissioner _____, an Assistant United States Attorney for the _____ District of _____, acting under the authority of the Treaty between the United States of America and the United Kingdom on Mutual Assistance in Criminal Matters, and under Title 28, United States Code, Section 1782, for the purpose of rendering assistance to the United Kingdom, command that you appear before me in Room _____, in the building located at _____, in the city of _____, in the state of _____, at _____ a.m./p.m., to provide testimony/documents regarding an alleged violation of:

the laws of the United Kingdom,
namely, **[major violation or violations]**
among other alleged violations,

and that at the time and place aforesaid you provide the following:

For failure to attend and provide testimony/said documents, you will be deemed guilty of contempt and liable to penalties under the law.

Dated:

COMMISSIONER _____
Assistant United States Attorney for the
_____ District of _____
Telephone (____)____-____

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MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR ORDER

The United States is seeking an Order appointing a Commissioner to collect evidence requested by the United Kingdom in its attached Treaty Request made pursuant to the Treaty between the United States of America and the United Kingdom on Mutual Assistance in Criminal Matters, __ UST __ (Senate Treaty Document 104-2), signed January 6, 1994, (entered into force December 2, 1996) [hereinafter referred to as "the Treaty"]. A treaty constitutes the law of the land. U.S. Const. art. VI. The provisions of a treaty have equal footing with acts of Congress and are binding on the courts. Asakura v. City of Seattle, Washington, 265 U.S. 332, 341 (1924); United States v. The Peggy, 5 U.S. 103 (1801). To the extent that the provisions of a treaty are inconsistent with a preexisting statutory provision, the treaty supersedes the statute. United States v. Erato, 2 F.3d 11, 15-16 (2d Cir. 1993) [hereinafter Erato]; see Breard v. Greene, 523 U.S. 371, 374 (1998).

A. The Treaty

The United States and the United Kingdom entered into the Treaty for the purpose of promoting mutual legal cooperation in criminal matters. The Treaty obliges each state to provide assistance to the other in investigations of offenses covered under the Treaty and in court proceedings related to such offenses. Article 1. The assistance includes interviews and depositions of witnesses, production of documents and other things, and asset freezes. Article 1(2); Barr v. U. S. Department of Justice, 645 F. Supp. 235, 237 (E.D.N.Y. 1986), aff'd, 819 F.2d 25 (2d Cir. 1987).

The Treaty anticipates that, in order to comply with the United States' treaty obligation, federal district courts will be called upon to execute requests from the United Kingdom. Article 5(2) provides that:

When execution of the request requires judicial . . . action, the request shall be presented to the appropriate authority

Consequently, the Treaty empowers federal district court to execute these requests.

Article 5(1) provides that:

The courts of the Requested Party shall have the authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

The Treaty contemplated that federal district courts will use compulsory measures to execute requests from the United Kingdom. Article 8(1) provides that:

A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records or articles of evidence by subpoena or such other method as may be permitted under the law of the Requested Party.

B. Use of the Treaty to Execute Requests for Assistance

The Treaty is self-executing and requires no implementing legislation. See Letter of Submittal of Treaty to the President from the Department of State, January 6, 1995. Even so, it contains little in the way of a procedural framework for executing requests. Instead, it relies on the law of each party to establish procedures for executing requests in that party. Article 5(1) provides that:

As empowered by this Treaty or national law, or in accordance with its national practice, the Requested Party shall take whatever steps it deems necessary to give effect to requests received from the Requesting Party. The courts of the Requested Party shall have the authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

Consequently, federal district courts routinely utilize the "commission" procedure authorized by 28 U.S.C. § 1782, the statute governing the provision of assistance for foreign judicial proceedings generally, to fulfill their judicial responsibility under the Treaty of executing requests from the United Kingdom.

1. Appointment of a commissioner

Section 1782 provides in pertinent part:

The district court . . . may direct that the testimony or statement [of a person who resides or is found within the district] be given or the document or other thing be produced, before a person appointed by the court.

A federal district court customarily appoints or "commissions" a person ("commissioner") to collect evidence on behalf of the court and authorizes the commissioner to submit the evidence collected to the requesting foreign court or authority. With requests for assistance in criminal matters, a court typically appoints an

Assistant United States Attorney as commissioner. However, a court also may commission a foreign authority together with (or in lieu of) an Assistant United States Attorney. See, e.g., In re Letter of Request from the Supreme Court of Hong Kong, 138 F.R.D. 27, 29 (S.D.N.Y. 1991) [hereinafter Hong Kong].

Application to a federal district court for appointment of a commissioner to execute a foreign request for judicial assistance is handled ex parte. In re Letter of Request from the Crown Prosecution Service of the United Kingdom, 870 F.2d 686, 688 (D.C. Cir. 1989); In re Letters Rogatory from the Tokyo District, Tokyo, Japan, 539 F.2d 1216, 1219 (9th Cir. 1976).

2. Establishment of an evidence-collecting procedure

Section 1782 further provides in pertinent part that:

To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A federal district court empowers a commissioner to collect the evidence using the procedure prescribed by the court. A court has "complete discretion in prescribing the procedure to be followed." Sen. Rep. No. 1580, 88th Cong., 2d Sess. 1 (1964), reprinted in 1964 U.S. Code Cong. & Admin. News 3782, 3789. When a court's order fails to specify a procedure by which a commissioner is to collect the evidence, the Federal Rules of Civil Procedure apply. In re Letters Rogatory from the Tokyo District Prosecutor's Office, Tokyo, Japan, 16 F.3d 1016, 1019 (9th Cir. 1994); Hong Kong, 138 F.R.D. at 31. However, as Section 1782 makes clear, when a court does specify a

procedure other than one in accordance with the Federal Rules of Civil Procedure, the alternative procedure shall apply. 28 U.S.C. § 1782(a); Euromepa S.A. v. R. Esmerian, Inc., 51 F.3d 1095, 1098 (2d Cir. 1995) [hereinafter Euromepa].

In executing requests from the United Kingdom, the Treaty obligates the courts to provide assistance "in accordance with its national practice." Article 5(1). In other words, the Treaty requires that courts order the use of procedures comparable to those applicable in domestic investigations and prosecutions of criminal matters rather than, by default, the Federal Rules of Civil Procedure.

a. Commissioner's subpoena

Article 5(1) provides for the issuance of procedural documents, such as subpoenas, to effectuate the gathering of evidence:

The courts of the Requested Party shall have the authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

If a federal district court so orders, a commissioner may use the attached form, entitled commissioner's subpoena, to obtain the requested evidence. See, e.g., Erato, 2 F.3d at 13-14 (incorporating in pertinent part the district court's order directing the use of commissioner's subpoenas). The commissioner's subpoena is a creation of neither the Federal Rules of Criminal Procedure nor the Federal Rules of Civil Procedure, but is an order of the court for the production of evidence in accordance with both the Treaty and Section 1782. See Article 5(1); 28 U.S.C. 1651; White v. National Football League, et. al, 41 F.3d 402, 409 (8th Cir. 1994), cert. denied, 515 U.S. 1137 (1995)(a court may issue whatever process it deems necessary to facilitate disposition of the matter before

it). Upon authorization by a court, a commissioner may issue such commissioner's subpoenas as are necessary to execute the request.

b. Notice of evidence taking

Article 8(1) requires the use of compulsory process in the execution of requests from the United Kingdom comparable or similar to the compulsory measures that would be used in domestic criminal investigations or prosecutions:

A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records or articles of evidence by subpoena or such other method as may be permitted under the law of the Requested Party.

Inasmuch as grand jury and criminal trial subpoenas are issued without notice to other than the recipients (i.e., no notice to targets, defendants, or third parties), commissioner subpoenas issued in execution of requests from the United Kingdom likewise should require no notice to other than the recipients. Accordingly, a federal district court should authorize a commissioner to collect the evidence requested without notice to any party other than the recipient of the commissioner's subpoena except to the extent that a request from the United Kingdom asks for specific notice procedures.¹

¹ Historically, United States authorities have executed requests for judicial assistance in criminal matters without notification to actual or potential targets of investigations, or even to parties in proceedings, in order to protect against compromising foreign investigations and proceedings. Moreover, United States authorities customarily rely on the requesting courts and authorities to provide such notice directly to the relevant parties as foreign law requires. Finally, requesting courts and authorities routinely request that United States executing authorities follow particular, stated notice procedures

c. The Present Request

The instant Treaty Request has been made by the Secretary of State for the Home Office, the Central Authority under Article 2 of the Treaty, in connection with a current criminal investigation by Officers of the Metropolitan Police, London, England. The prosecuting authority is The Director of Public Prosecutions of the Crown Prosecution Service, London, England.

Sometime during January 2004, the Metropolitan Police, London, England began an investigation of Joshua Chibi Dariye, a Nigerian National, as a central figure in a suspected fraud operation and money laundering scheme in the U.K. Dariye's name was discovered to control numerous bank accounts where million of dollars appeared to have been transferred from Nigeria to the U.K. Many of the transfers originating from Nigeria were related to a company named Pinnacle Communications, Ltd. Pinnacle with offices in Lagos, Nigeria, according to U.K. investigators they believe there is some affiliation with the Harris Corporation, 2400 Palm Bay Road, N.E., Palm Bay, Florida.

Dariye's local employment in Nigeria raises a suspicion as to his ability to control and fund numerous bank accounts in the U.K.

Leads by the U.K. investigators in tracing the money flow lead them to Osceola County, Florida. It was there that the friends of Dariye, arranged financing through

when such procedures are necessary or useful under the foreign law or practice. For example, foreign requests frequently ask (1) that a person to be interviewed (generally a defendant or suspect) be given notice of applicable testimonial privileges (e.g., against self-incrimination) at the time of the interview and (2) that a defendant and defense counsel be permitted to be present during the taking of testimony of a witness and be given sufficient notice to make arrangements.

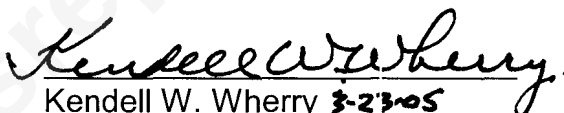
Vistana Development Inc., Lake Buena Vista, Florida for the purchase of two time share units.

The British authorities in advancing their investigation have requested, through MLAT assistance, for arrangement to be made to interview and depose representatives of the Harris Corporation and Vista Development Inc; and to issue subpoenas, for the production of real estate records, bank records and business of Harris and Vista or other needs that might arise.

Accordingly, to execute this request, the government moves this Court to issue the attached Order appointing the undersigned Assistant United States Attorney as Commissioner, authorizing the undersigned to take the actions necessary, including the issuance of Commissioner's subpoenas, to obtain the evidence requested, and to adopt such procedures in receipt of the evidence as are consistent with the intended use thereof in the United Kingdom.

Respectfully submitted,

PAUL I. PEREZ
UNITED STATES ATTORNEY

By: 
Kendell W. Wherry 3-23-05
Assistant United States Attorney

C W P Newell
Director, Casework

EXH. A



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The Competent Judicial Authority
of the United States of America
Office of International Affairs
Department Justice
Washington DC
United States of America

Facsimile: 020 7 796 8338

Direct Line: 020 7 796 8648

Our Reference:

Your Reference: LB3.462.04

14th September 2004

Dear Sirs

LETTER OF REQUEST – HARRIS CORPORATION

I have the honour to request your assistance under the provisions of the Treaty of Mutual Legal Assistance of Criminal Matters 1994 between the United Kingdom and the United States of America, in obtaining certain information, statements and documents in relation to a criminal investigation being conducted by officers of the Metropolitan Police in London.

The Prosecution of Offences Act 1985 states that the Director of Public Prosecutions has the duty to take over the conduct of criminal proceedings (other than certain proceedings relating to relatively minor offences) instituted on behalf of a Police Force. The Director is the Head of the Crown Prosecution Service. As a Crown Prosecutor designated by him I have his powers to conduct the proceedings in this case and I am designated a prosecuting authority under the Criminal Justice (International Co-operation) Act 1990 (Designation of Prosecuting Authorities) Order 1991. Accordingly I am empowered to issue this letter.

There are reasonable grounds to suspect that money laundering offences have been committed by

Joshua Chibi DARIYE, a Nigerian nationals;
Date of birth: 27th July 1957

The current investigations relate to money laundering offences contrary to Sections 93A, 93B and 93C of the Criminal Justice Act 1988, as amended, and possible offences contrary to Sections 327, 328 and 329 of the Proceeds of Crime Act 2002 (which came into force on 24th February 2003).

PURPOSE OF REQUEST

SCANNED

The purpose of this request is:

1. To secure evidence to be use in a criminal investigation and any subsequent trial or trials and, following conviction, to determine the benefit obtained from DARIYE'S involvement in money laundering which in turn will subsequently lead to confiscation proceedings against DARIYE.
2. To utilise the evidence obtained in (1) above to be made available for the Crown Court to take into account when considering the making of a confiscation order under the provisions of the Criminal Justice Act 1988 (as amended) and the Proceeds of Crime Act 2002 as appropriate.
3. To utilise the evidence obtained in (1) above in any proceedings in the United Kingdom ancillary to the criminal proceedings, including, but not limited to restraint, confiscation, enforcement and contempt of court proceedings.
4. To utilise evidence obtained in (1) above in any proceedings in the United Kingdom ancillary to the confiscation proceedings, namely for the High Court to take into account when considering an application by the Crown Prosecution Service to appoint a receiver to enforce any confiscation order under the provisions of the Criminal Justice Act 1988 (as amended), and the Proceeds of Crime Act 2002, which may be made against DARIYE.

SUMMARY OF FACTS

In the second week of January 2004 an order for computer equipment was placed with a company via the Internet in Holland. This order was placed with the use of a credit card, which the holder did not authorise. The computer company in Holland alerted the Metropolitan Police as they had been the victim of several such orders in the past few months and had lost approximately £300,000.00.

On 19th January 2004 this order was shipped from Holland into the United Kingdom and DHL delivered it to an address in London. The goods were collected shortly after the delivery and the suspects were arrested by Police officers. A search warrant was executed at the address and all the delivered goods were recovered.

Whilst at the Police Station the detained Nigerian male gave his personal details and subsequently his home address was searched. During the search of the premises, £11,560.00 was found inside a locked briefcase. Other items recovered from the premises were computers, credit cards in various names, equipment connected to the production of counterfeit credit cards, forged passports and property believed stolen from the post office.

During this search Mr Christopher MEKWUNYE let himself into the address and was subsequently arrested for 'fraud' offences. MEKWUNYE claimed the £11,560.00 belonged to his employer, Mr Joshua DARIYE, but MEKWUNYE was unable to provide any documentations as to its origins.

MEKWUNYE was interviewed on the 20/1/04 regarding the cash seized. He stated that the cash was given to him by his employer, a Joshua DARIYE who is the executive governor of Plateau State in Nigeria, to deposit into his account.

An application was made for a retention order in respect of the seized £11,560.00 at Stratford Magistrates Court on the 22nd January 2004. The magistrates granted a retention order to allow investigations to continue into the origins of this money. Mekwunye failed to appear at the court hearing and has since failed to answer letters sent to him through his solicitor about this money. The monies recovered have been chemically tested by the staff of a company specialising in such tests and, significantly, it has been confirmed that the bank notes recovered are contaminated with heroin (a class A controlled drug) to an extent higher than would be expected of bank notes in normal circulation.

Documentation seized from the search, including a Barclays Bank statement in the name Joshua Chibi DARIYE with an address of Flat 28, Regents Plaza, apts, 8 Greville Road, London NW6. The Barclays Bank statement showed a one off credit of £918,029.00 being transferred in on the 27/8/2002.

The officers conducting enquiries into the credit card offences obtained search warrants and this address was searched. Seized were other financial documents indicating DARIYE also Banked with National Westminster Bank PLC and held a Barclaycard. A National Westminster Bank statement was seized which showed large balances, one being a United States Dollar account in the name J.C. DARIYE for \$52,188.00 as at 28/4/2003, the other showed a balance of £36,006.16 at 13/8/2003.

An suspected money laundering offences investigation into and the affairs of DARIYE commenced after the bank statements were seized.

The address, Flat 28 Regents Plaza Apartments, 8 Grenville Road, London NW6 is used by DARIYE to register his bank accounts. Enquiries with Her Majesties Land Registry have revealed that this property was purchased in September 2001 for £395,000.00 with no mortgage and was registered in the name of Joseph DAGWAN. This male cannot be traced in the United Kingdom or Nigeria and it is suspected to be an alias of Joshua DARIYE. Enquiries with the solicitors Messrs Rowberry Morris who conducted the conveyancing for the purchase of this property have revealed that it was part funded with monies from a company named Pinnacle Communications Ltd and a male named Wagdi Karam MIKHAIL.

Pinnacle Communications Ltd hold United States Dollar accounts at Barclays Bank, Knightsbridge, London UK and linked to these are the personal accounts of the companies chairman, Mr Babatunde Lucky OMOLUWA. Mr OMOLUWA is the sole signatory for the accounts.

Also seized from this address was documentation detailing three separate transactions totalling \$12.5m. One transaction made reference to:-

America Express Bank,
New York Agency,
PO Box 740 New York NY 1008, USA,
Swift code; AE1BUS33,
A/C # 739961 for First American Bank of Kenya, Nairobi, Swift code;

FIAKKENX.

Benf :Ngatia & Associates A/C # 0023696002 \$5m.

The other transactions involved similar amounts but made reference to an account held by a company named Franco Investments Ltd with an account number of 80389811. The name Frederick Harrison NGATIA also features. Enquiries have shown that Franco Investments Ltd to be an offshore company based in the Cayman Islands. Enquiries have shown that Frederick Ngatia and Associates are a firm of Lawyers based in Nairobi, Kenya and it is suspected that this firm are DARIYE'S lawyers and could be involved in laundering funds through the offshore accounts of Franco Investments Ltd.

Enquiries with both Barclays and National Westminster Banks have revealed that there is currently £1.1m held with Barclay's Bank PLC in DARIYE'S name and, National Westminster Bank PLC has confirmed that there is currently a £175,000.00 & \$80,000.00 in two accounts for him. Barclaycard were served with production orders and it has been established that a female named Joyce OYEBANJO has been responsible for the day to day running of DARIYE'S account held with this company for a number of years.

National Westminster Bank PLC has also confirmed that Mrs Valentina DARIYE, the wife of Joshua DARIYE, holds at least one account with their Bank, which has a balance in excess of £100,000.00. Enquiries with National Westminster Bank plc have confirmed that Joyce OYEBANJO paid £100,000.00 to Mrs Valentina DARIYE in the form of a cheque on the 31/10/2003.

The Nigerian Embassy in London was approached in respect of DARIYE'S affairs. The Nigerian authorities suspect DARIYE of corrupt practices within his State of Plateau. DARIYE would only earn approximately £1000.00 per month in his position. It is a breach of his position to hold a foreign bank account. Upon taking office in 1999 DARIYE completed and signed a declaration indicating that he holds no assets or bank accounts abroad, which is not true. DARIYE took office for a second term in 2003 and completed the same information on a second form.

The President of Nigeria is aware of this investigation and he has fully supported his State Secret Service in assisting the Metropolitan Police in obtaining the necessary evidence in order to prosecute DARIYE in the United Kingdom. It is not possible for the Nigerian authorities to prosecute him in Nigeria as he has diplomatic immunity.

Barclays Bank PLC & National Westminster Bank PLC were served with production orders and supplied ledgers of accounts held by Joshua DARIYE, whilst orders were also served for Joyce OYEBANJO and a man Wagdi Karam MIKHAIL who also holds bank accounts. Closer inspection of the ledgers revealed several large transfers into the accounts held by each of them. The majority of transfers originate from Nigerian companies and have taken place since 1998 and are in excess of £3m.

Joyce OYEBANJO has received several recent payments from July 2003 and October 2003 totalling £890,000.00. She is responsible for two of DARIYE'S children who are being privately educated in the UK. Inspection of the bank accounts held by OYEBANJO show a lavish lifestyle way in excess of her yearly salary of £25,000.00. The Nigerian authorities have indicated that DARIYE met OYEBANJO in 1990 and she is his mistress. It appears that she is a "purse" holder for DARIYE.

Transfers into MIKHAIL'S Barclays' account have originated from three sources:

- a) Pinnacle Communications Ltd have been responsible for transfer totalling £577,000.00 from April 1999 to March 2004.
- b) The chairman, Mr Babatunde Lucky OMOLUWA, has been responsible for payments totalling £215,279.62 from August 1999 to December 2003.
- c) Cash amounting to £161,065.00 from July 1998 to November 2003 and unidentified Banking credits from November 2001 to October 2003.

Barclays Bank PLC supplied information that several of the transactions made by Nigerian companies were made via their Wall Street & Broadway branches. Other large sterling transactions were identified with European Banks being used to conduct those transactions.

One particular payment of \$72,250.00 was made to Joshua DARIYE's National Westminster Bank account on the 12/12/2001 from Pinnacle Communications Ltd. This payment has been traced from the United States Dollar account held by Pinnacle Communications at Barclays Bank in Knightsbridge, London.

Officers from the Metropolitan Police travelled to Nigeria in June 2004. During the visit a lawyer was appointed to assist them from the State Secret Service. Enquiries were made by the lawyer who approached the chairman of Pinnacle Communications Ltd, Mr Babatunde Lucky OMOLUWA, and confronted him with evidence of the transactions to the solicitors, Rowberry Morris, Joshua Chibi DARIYE and Wagdi Karam MIKHAIL. The chairman refused to assist the lawyer with the enquiry and asked him to leave his office. Immediately afterwards OMOLUWA contacted his bankers in London by phone and queried why his personal and companies bank details had been disclosed and wanted the name of the bank's representative whom he could sue.

Information from the Nigerian authorities indicated that MIKHAIL is suspected to be DARIYE'S driver when he visits the UK.

MIKHAIL has a United Kingdom tax record, which shows a very modest level of income up to 2002 employed as a chef working for a hotel chain. Joyce OYEBANJO also has a tax record, which shows her employment currently in a clerical position earning approximately £25,000.00 per year.

Further enquiries in Nigeria and London have revealed that the company, Pinnacle Communications Ltd, is a representative of Harris Corporation based in Palm Bay, Florida, United States Of America, whilst Babatunde Lucky Omoluwa is its executive representative in Nigeria.

Harris Corporation has an operation in Nigeria based at Harris Communications systems Nigeria Ltd, Imperial Place, Plot 274, Ajose Adeogun Street, V1, Lagos, Nigeria. A phone call was made to this office from London and the company confirmed they were connected to Pinnacle Communications Ltd and the chairman was Babatunde Lucky OMOLUWA.

RESTRAINT AND CONFISCATION PROCEEDINGS IN THE UNITED KINGDOM

The Criminal Justice Act 1988 as amended by the Criminal Justice Act 1993 and the Proceeds of Crime Act 1995 [hereafter referred to as "the CJA 1983 (as amended)"] applies in this case because all the offences with which the defendant would be charged are qualifying offences (referred to in the CJA 1988 as amended as "relevant criminal conduct") namely indictable offences (other than drug trafficking and terrorism offences) from which he had benefited and which were committed after 1 November 1995.

Pursuant to the CJA 1988 (as amended), once a defendant is convicted of an offence to which Part VI of the CJA 1988 (as amended) applies, the Crown Court may hold a confiscation hearing either prior to sentencing him or up to six months after the date of conviction. If the court is of the opinion that there are exceptional circumstances, it may postpone the confiscation hearing beyond the six-months period.

The Crown Court must determine whether the defendant has benefited from any relevant criminal conduct. A defendant's relevant criminal conduct arises from all offences of which he or she is convicted in the same proceedings *together with any that are admitted and asked to be taken into consideration*.

A defendant benefits from an offence if he obtains property as a result of, or in connection with, its commission, and his benefits is the value of the property so obtained.

The prosecution if it considers appropriate can serve a notice upon the Crown Court declaring that it is their opinion that this is a case in which it is appropriate for the court to apply the assumptions. Accordingly, the Crown Court has discretion to make the assumptions that the defendant's lifestyle is financed from the proceeds of his criminal conduct.

Those assumptions are:-

1. That any property appearing to the court –
 - i. to be held by the defendant at the date of conviction or at any time in the period between that date and the determination in question, or
 - ii. to have been transferred to him at any time since the beginning of the relevant period, was received by him, at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Part of this Act applies;
1. that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of offences to which this Part of this Act applies; and
2. that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free from any other interests in it.

Once the Crown Court has made the assumptions the onus is on the defendant to rebut them by demonstrating to the court that she obtained the property or made the expenditure from legitimate sources.

The Crown Court should not make the assumptions if the assumption is shown to be incorrect in the defendant's case or if the Crown Court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption was to be made in relation to that property or expenditure.

Once the Crown Court has decided upon the amount of the benefit, it must go on to consider the amount of realisable property held by the defendant that may be available to satisfy the confiscation order.

Realisable property is widely defined. It includes any property in which the defendant holds an interest (interest includes right), and any property that has been given by the defendant to another for little or no consideration. The Crown Court, in coming to the decision, may take account of any property held by the defendant wherever it is situated in the world.

If the Crown Court finds that the amount of the realisable property held by the defendant is less than the amount of the benefit, the Court must make a confiscation order against the defendant in the lower amount.

The High Court may make a restraint order prohibiting any person from dealing with any realisable property.

- a) where proceedings have been instituted in England and Wales against a defendant for an offence to which part VI of the Criminal Justice Act 1988 (as amended) applies,
- b) those proceedings have not been concluded and;
- c) there are reasonable grounds for thinking that a confiscation order may be made in the proceedings or a confiscation order has been made.

The purpose of the restraint order is to prohibit the defendant dealing with realisable property so that the realisable property can be utilised for the satisfaction of the confiscation order.

Similar, but different, provisions apply in respect of offences where the relevant criminal conduct relates to money laundering offences under the Proceeds of Crime Act 2002 arising from general criminal conduct.

These provisions apply where a person has been convicted of an offence within Schedule 2 of the Proceeds of Crime Act 2002, where the offence has been committed after the 24th February 2003. The court must determine whether the defendant has a 'criminal lifestyle' within section 73. A person has a criminal lifestyle if either he is convicted of one of the offences specified in Schedule 2 to the Act (including an offence contrary to section 327 (concealing etc criminal property) or 328 (assisting another to retain criminal property) of the Act and if it decides that he does the court must then decide whether he has 'benefited from his general criminal conduct'. General criminal conduct is defined as 'all his criminal conduct' whether occurring before or after the passing of the Act or whether property

constituting a benefit from conduct was obtained before or after the passing of the Act (section 76(2)).

For the purpose of deciding whether a defendant with a criminal lifestyle has benefited from his 'general criminal conduct' and if he has the extent of his benefit the court is required by section 10 of the Act to make a number of assumptions, unless the assumption is 'shown to be incorrect' or there would be a 'serious risk of injustice' if the assumption were made. If the court is satisfied about these matters the court then has to determine the recoverable amount for the purposes of section 7 of the Act. It does this by taking the benefit from the general criminal conduct as the starting point for calculation and then making any reduction required by section 7(2) of the Act where the available amount is less than the benefit.

The substance of the four assumptions which the court must make under section 10 of the 2002 Act is closely aligned with the earlier legislation. These are that first: any property transferred to the defendant within the period of six years ending on the day on which proceedings were started was obtained by him as a result of his general criminal conduct; second: any property held by him at any time after the date of conviction was obtained by him as a result of his general criminal conduct and at the earliest time at which he appears to have held it; third: any expenditure incurred by him within a period of six years ending with the date on which the proceedings were started against him was met from property obtained by him as a result of his general criminal conduct and four: any property obtained or assumed to have been obtained by the defendant was free of any other interest in the property.

If the court decides that the defendant does not have a criminal lifestyle it then looks at whether or not he has benefited from his 'particular criminal conduct'. In deciding this issue the court may not make any of the assumptions under section 10, but it may order the defendant to give the court the 'information specified in the order' (under section 18) and if the defendant fails to comply the court may draw such inferences as it believes are appropriate (section 18(4)).

ENQUIRIES TO BE MADE

It is requested that the following enquiries be made and written witness statements producing all relevant exhibits be obtained.

To apply for the appropriate judicial orders to obtain information and statements from Harris Corporation, 2400 Palm Bay Road, NE, Palm Bay, FL, USA 32905. This company is suspected to have appointed a representative, namely, Babatunde Lucky OMOLUWA, who is currently trading in Nigeria under the name of Pinnacle Communications Ltd.

1. a) To interview a suitable representative of Harris Corporation in order to ascertain what the link is between Harris Corporation and Pinnacle Communications Ltd.
- b) To confirm that a contract to install television and radio communication equipment was secured with the Government of Joshua Dariye in Nigeria and Pinnacle Communications for 950 million Naira sometime in 1999 and 2000 and to supply any documentation relating to this contract indicating exactly where the money

should have been spent. It is believed that the amount involved in this contract was approximately \$73 million).

c) To establish why Pinnacle Communications Ltd would have paid \$50,997.90 on 13/9/01 and \$542,684.78 on 19/9/01 from a US Dollar account held in the companies name at Barclays Bank, Knightsbridge, London UK to a firm of solicitors, Rowberry Morris for the purchase of Flat 28, Regents Plaza Apartments, 8 Greville Road, London NW6 UK.

d) To establish why \$72,250.00 was paid on 12/12/01 to a Barclays Bank account held in London in the name Joshua Chibi DARIYE from a US dollar account held in the name Pinnacle Communications Ltd at Barclays Bank, Knightsbridge, London.

e) To establish why several transactions have been made to a Barclays Bank account held in the name Wagdi Karam MIKHAIL in the UK, which has been credited from the US Dollar Bank accounts of Pinnacle Communications Ltd, held at Barclays Bank, Knightsbridge, London, UK since April 1999 to March 2004 totalling £577,000.00.

f) To establish why several transactions have been made to a Barclays Bank account held in the name Wagdi Karam MIKHAIL in the UK, which has been credited from the personal US Dollar accounts, held at Barclays Bank, Knightsbridge, London, UK, by Pinnacle Communications Ltd chairman, Babatunde Lucky OMOLUWA, since August 1999 to December 2003 totalling £215,279.62.

g) To make enquiries in order to obtain a statement from First American Express Bank, New York Agency, PO Box 740, New York NY10008 USA and ascertain if any transactions of \$5m can be traced for the benefit of a company named Frederick NGATIA & Associates or Franco Investments Ltd.

2. It is requested that the statement sought from Harris Corporation deal with the following matters:-

a) The reason for the transfers as above and who authorised them.,

b) Details of any correspondence relating to the connection between Harris Corporation & Pinnacle Communications Ltd and Babatunde Lucky Omoluwa:

c) Exhibit copies of all relevant documents including:-

i. Documents attributable to b) above.

ii. Documents held by Harris Corporation concerning Pinnacle Communications Ltd and Babatunde Lucky OMOLUWA.

3. That a statement be taken from an appropriate manager from American Express Bank, New York Agency with the address of PO Box 740 New York, NY 10008 USA dealing with the following matters:

a) Information about any \$5m transaction involving Frederick NGATIA

& Associates, Frederick Harris on NGATIA, Franco Investments Ltd or Joshua Chibi DARIYE.

- b) If any transaction is traced, the conduct of any accounts, including details of inter account transfers, telegraphic transfers, standing orders, direct debits, paid cheques and vouchers (both credit and debit) and managers notes.
- c) When the transfers took place and who ordered them together with any current signatories.
- d) The amounts and deposits made into any account traced and withdrawals made out of the account.
- e) Information about the transfers including full details, and any manager's notes.
- f) Details of any documents, files, accounts or other records used in ordinary business, including bonds, securities or deeds, held by the bank or on behalf of Frederick NGATIA & Associates, Frederick Harrison NGATIA, Franco Investments Ltd or Joshua Chibi DARIYE.
- g) Details of any correspondence relating to the transfers and:
- h) That copies of all relevant records be exhibited, and be made available in easily readable format, including:
 - i) Documents attributable to the transfers or
 - ii) Documents held by the bank on behalf of Frederick NGATIA & Associates, Frederick Harrison NGATIA, Franco Investments Ltd or Joshua Chibi DARIYE.
 - iii) Bank statements or
 - iv) Any documents regarding financial dealings with Fredrick NGATIA & Associates, Frederick Harrison, NGATIA, Franco Investments Ltd or Joshua Chibi DARIYE.

Copies of the documents are requested to be supplied in a form in which they can be easily and clearly examined, whether those documents are in written form, kept on microfilms, magnetic tape or any other form of mechanical or electronic data retrieval mechanism or held in or on any other storage media whatsoever

4. Should the enquiries reveal any other accounts or property held by Frederick NGATIA & Associates, Fredrick Harrison NGATIA, Franco Investments Ltd or Joshua Chibi DARIYE, then assistance in the enquiry is sought as set out in paragraph (3) above in relation to those accounts.

5. Should the enquires reveal the details of any joint account holders then assistance in the enquiry is sought in respect of each joint account holder as follows:

- a) To visit that joint account holder
- b) To interview that joint account holder; and
- c) To take a statement from that joint account holder regarding the conduct of the joint account.
- d)

DOCUMENTARY EVIDENCE

There are a number of statutory provisions in the law in England and Wales that govern the admissibility into evidence of business records.

Section 24 of the Criminal Justice Act 1988 (as amended) provides that a statement (which is defined for these purposes as "any representation of fact") in a document shall be admissible as evidence of any fact of which direct oral evidence would be admissible if the conditions specified in that section are satisfied. These conditions relate to the manner in which the document is created and the sources of information from which it is compiled.

Section 25 of the Criminal Justice Act 1988 (as amended) preserves a discretion in the trial judge to regulate the admissibility of such evidence. This section specifies the principles to be followed in exercising that discretion.

It is requested that the statements referred to above include evidence, which enable the court to consider the applicability of Section 24 and 25 of the Criminal Justice Act 1988 (as amended).

ASSISTANCE REQUIRED

1. It is requested that the above enquiries are made, and that Detective Sergeant Robert INGRAM and Detective Constable Peter CLARK of the Metropolitan Police, Economic and Specialist Crime Operational Unit, telephone number 0044 208 345 2844/8 Fax number 0044 208 2846, be permitted to be present when the enquiries are made, and to examine the relevant documents and liaise with United States of America Law enforcement officers and officials on the relevance and appropriateness of each enquiry.
2. That such other enquiries be made, persons be interviewed, and written statements and exhibits be secured as appear to be necessary in the course of the investigation.
3. It is requested that all witness statement be taken in writing, dated and headed by the following declaration: "This statement consisting of ____ pages is true to the best of my knowledge and belief." The number of pages should be filled in the space once the statement has been written and witness should sign the statement beside the declaration, on every page and at the end,. It is

requested that the witness' address, telephone number and Date of Birth be written on the back of the first page of the statement.

4. If documentation is obtained from the witness, he should produce each document as an exhibit in his statement. In order to do this the statement should describe the document and give it an exhibit number. The exhibit number should consist of the witness' and a consecutive number. For example, the first document produced by John Andrew Smith will have the exhibit number JAS1, the second will be JAS2 and so on.
5. The witness should state his position in the organisation and produce the documents as set out above. In relation to such documents the witness should be asked to state whether the documents were written by him. If they were not written by him the witness should state how the documents were created and particular:
 - (a) Were they created by a person in the course of a trade, business, profession or other occupation;
 - (b) Was the information contained in the documents supplied by a person (whether or not he was the person who made them) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with;
 - (c) If the information was not supplied directly, did each person through whom it was supplied receive it in the course of a trade, business, profession or other occupation.

The witness statement should therefore include the following words: "In order to carry out my duties I have access to all the [insert description of records e.g. e-mail user] records both manual and computerised relating to insert [what the records relate to e.g. user of e-mail address _____]. The documents to which I refer are derived from and form part of the records relating to the business of [insert the business organisation _____ .com] and were compiled in the ordinary course of business from information recorded by persons who had, or may be reasonably be supposed to have had personal knowledge of the matter dealt with in the information they supplied. The person or persons who supplied the information recorded in the records cannot reasonably be expected to have any recollection of the matter dealt with in the information they supplied."

6. That such enquiries are made, person interviewed and exhibits secured as appears to be necessary in the course of the investigation.
7. That an indication be obtained of the preparedness of any witness to travel to England to give evidence in person.
8. That any information held on the computer in any form be preserved and secured from unauthorised interference and made available in due course of

the investigating officers and the Crown Prosecution Service for use at any subsequent trial.

9. That an indication be obtained from the witness who make statements in writing of their willingness to travel to give evidence in person if required.
10. That signed and certified copies of any statements made and any documents or other items secured during the course of the enquiry be handed to the officers and permission given for their removal to England to be used for the purposes specified in this letter.

It is confirmed that the material requested as a result of these enquiries could be obtained by the police under current law and powers in England and Wales if the material was located in England and Wales.

I thank you in advance for your valuable co-operation concerning this case.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D M Williams', with a horizontal line underneath.

D M Williams
Crown Prosecutor

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TREATY BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and The Government of the United Kingdom of Great Britain and Northern Ireland,

Desiring to improve the effectiveness of the law enforcement authorities of both countries in the investigation, prosecution, and combatting of crime through cooperation and mutual legal assistance in criminal matters,

Reaffirming their determination to enhance assistance in the fight against crime as set out in the Agreement Concerning the Investigation of Drug Trafficking Offences and the Seizure and Forfeiture of Proceeds and Instrumentalities of Drug Trafficking, done at London February 9, 1989,

Have agreed as follows:

ARTICLE 1

Scope of Assistance

1. The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty, for the purpose of proceedings as defined in Article 19 of this Treaty.

2. Assistance shall include:

- a) taking the testimony or statements of persons;
- b) providing documents, records, and evidence;
- c) serving documents;
- d) locating or identifying persons;
- e) transferring persons in custody for testimony (or other purposes);
- f) executing requests for searches and seizures;
- g) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and assistance in related proceedings; and
- h) such other assistance as may be agreed between Central Authorities.

3. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

ARTICLE 2

Central Authorities

1. Central Authorities shall be established by both Parties.
2. For the United States of America, the Central Authority shall be the Attorney General or a person or agency designated by him. For the United Kingdom, the Central Authority shall be the Secretary of State for the Home Department or a person or agency designated by him.
3. Requests under this Treaty shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.
4. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

ARTICLE 3

Limitations on Assistance

1. The Central Authority of the Requested Party may refuse assistance if:

- (a) the Requested Party is of the opinion that the request, if granted, would impair its sovereignty, security, or other essential interests or would be contrary to important public policy;
- (b) the request relates to an offender who, if proceeded against in the Requested Party for the offence for which assistance is requested, would be entitled to be discharged on the grounds of a previous acquittal or conviction; or
- (c) the request relates to an offence that is regarded by the Requested Party as:
 - (i) an offence of a political character; or
 - (ii) an offence under military law of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party.

2. Before denying assistance pursuant to this Article, the Central Authority of the Requested Party shall consult with the Central Authority of the Requesting Party to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with the conditions.

ARTICLE 4

Form and Contents of Requests

1. Requests shall be submitted in writing. However, in urgent circumstances, the request may be made orally but shall be confirmed in writing within ten days thereafter.

2. The request shall include the following:

- (a) the name of the authority conducting the proceedings to which the request relates;
- (b) the subject matter and nature of the proceedings for the purposes of which the request is made;
- (c) a summary of the information giving rise to the request;
- (d) a description of the evidence or information or other assistance sought; and
- (e) the purpose for which the evidence or information or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

- (a) the identity, date of birth and location of any person from whom evidence is sought;
- (b) the identity, date of birth and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made;
- (c) available information on the identity and whereabouts of a person to be located;
- (d) a precise description of the place or person to be searched and of the articles to be seized;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of any particular procedures to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled;
- (i) any other information which may be brought to the attention of the Requested Party to facilitate its execution of the request; and
- (j) requirements for confidentiality.

4. The Requested Party may ask the Requesting Party to provide any further information which appears to the Requested Party to be necessary for the purpose of executing the request.

ARTICLE 5

Execution of Requests

1. As empowered by this Treaty or by national law, or in accordance with its national practice, the Requested Party shall take whatever steps it deems necessary to give effect to requests received from the Requesting Party. The courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. When execution of the request requires judicial or administrative action, the request shall be presented to the appropriate authority by the persons appointed by the Central Authority of the Requested Party.

3. The method of execution specified in the request shall be followed to the extent that it is not incompatible with the laws and practices of the Requested Party.

4. If the Central Authority of the Requested Party determines that execution of the request would interfere with ongoing proceedings or prejudice the safety of any person in the territory of the Requested Party, the Central Authority of that Party may postpone execution, or make execution subject to conditions determined necessary after consultation with the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.

5. The Central Authority of the Requested Party shall facilitate the participation in the execution of the request of such persons as are specified in the request.

6. The Central Authority of the Requested Party may ask the Central Authority of the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

7. The Central Authority of the Requesting Party shall inform the Central Authority of the Requested Party promptly of any circumstances which make it inappropriate to proceed with the execution of the request or which require modification of the action requested.

8. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request is denied, the Central Authority of the Requested Party shall inform the Central Authority of the reasons for the denial.

ARTICLE 6

Costs

1. The Requested Party shall, subject to paragraph (2) of this Article, pay all costs relating to the execution of the request, except for the fees of expert witnesses and the allowances and expenses related to the travel of persons pursuant to Articles 10 and 11 of this Treaty, which fees, allowances, and expenses shall be paid by the Requesting Party.

2. If the Central Authority of the Requested Party notifies the Central Authority of the Requesting Party that execution of the request might require costs or other resources of an extraordinary nature, or if it otherwise requests, the Central Authorities shall consult with a view to reaching agreement on the conditions under which the request shall be executed and the manner in which costs shall be allocated.

ARTICLE 7

Confidentiality and Limitations on Use

1. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

2. The Requesting Party shall not use or disclose any information or evidence obtained under this Treaty for any purposes other than for the proceedings stated in the request without the prior consent of the Requested Party.

3. Unless otherwise indicated by the Requested Party when executing the request, information or evidence, the contents of which have been disclosed in a public judicial or administrative hearing related to the request, may thereafter be used for any purpose.

ARTICLE 8

Taking Testimony and Producing Evidence in the Territory of the Requested Party

1. A person in the territory of the Requested Party from whom evidence is requested pursuant to this Treaty may be compelled, if necessary, to appear in order to testify or produce documents, records, or articles of evidence by subpoena or such other method as may be permitted under the law of the Requested Party.

2. A person requested to testify or to produce documentary information or articles in the territory of the Requested Party may be compelled to do so in accordance with the requirements of the law of the Requested Party. If such person asserts a claim of immunity, incapacity or privilege under the laws of the Requesting Party, the evidence shall nonetheless be taken and the claim be made known to the Requesting Party for resolution by the authorities of that Party.

3. Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of the evidence pursuant to this Article.

4. The Requested Party shall allow persons specified in the request to ask questions of the person whose testimony or evidence is being taken, through a legal representative qualified to appear before the courts of the Requested Party.

5. Documentary information produced pursuant to this Article may be authenticated by the attestation of a person competent to do so in the form indicated in Appendix A to this Treaty. No further authentication or certification shall be necessary in order for such documentary information to be admissible in evidence in proceedings in the territory of the Requesting Party. Documentary information produced pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

ARTICLE 9

Records of Government Agencies

1. The Requested Party shall provide the Requesting Party with copies of publicly available records of government departments and agencies of the Requested Party.

2. The Requested Party may provide a copy of any record or information in the possession of a government department or agency but not publicly available to the same extent and on the same conditions as to its own law enforcement or judicial authorities. The Requested Party may refuse a request pursuant to this paragraph entirely or in part.

3. Official records provided pursuant to this Article shall be authenticated by the Central Authority of the Requested Party in the manner indicated in Appendix B to this Treaty. No further authentication or certification shall be necessary in order for such records to be admissible in evidence in proceedings in the territory of the Requesting Party. Records provided pursuant to this Article may also be authenticated pursuant to such other form or manner as may be prescribed from time to time by either Central Authority.

ARTICLE 10

Personal Appearance in the Territory of the Requesting Party

1. A request under this Treaty may seek assistance in facilitating the appearance of any person in the territory of the Requesting Party for the purpose of giving evidence before a court or of being identified in, or otherwise by his presence assisting, any proceedings.

2. The Central Authority of the Requested Party shall:

- (a) ask a person whose voluntary appearance in the territory of the Requesting Party is desired whether he agrees to appear; and
- (b) promptly inform the Central Authority of the Requesting Party of his answer.

3. If the Central Authority of the Requesting Party so indicates, a person agreeing to appear in the territory of the Requesting Party pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded his departure from the territory of the Requested Party.

4. The safe conduct provided for by this Article shall cease fifteen days after the Central Authority of the Requesting Party has notified the Central Authority of the Requested Party that the person,s presence is no longer required, or if the person has left the territory of the Requesting Party and voluntarily returned to it.

ARTICLE 11

Transfer of Persons in Custody

1. A person in the custody of one Party whose presence in the territory of the other Party is sought for the purpose of providing assistance under this Treaty shall be transferred for that purpose if the person and both Parties consent.

2. For the purposes of this Article:

- (a) the Requesting Party shall be responsible for the safety of the person transferred and shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorised by the Requesting Party;
- (b) the Requesting Party shall return the person transferred to the custody of the Requested Party as soon as circumstances permit and in any event no later than the date upon which he would have been released from custody in the territory of the Requested Party, unless otherwise agreed by both Central Authorities and the person transferred; and
- (c) the Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.

ARTICLE 12

Location or Identification of Persons

1. The Requested Party shall make best efforts to ascertain the location or identity of persons specified in the request.
2. The Central Authority of the Requested party shall promptly communicate the results of its inquiries to the Central Authority of the Requesting Party.

ARTICLE 13

Service of Documents

1. The Requested Party shall, as far as possible, effect service of any document relating to or forming part of any request for assistance properly made pursuant to this Treaty by the Requesting Party, including any subpoena or other process requiring the appearance of any person before any authority or tribunal in the territory of the Requesting Party.
2. Service of any subpoena or other process by virtue of paragraph (1) of this Article shall not impose any obligation under the law of the Requested Party to comply with it.
3. The Central Authority of the Requesting Party shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting Party a reasonable time before the scheduled appearance.
4. The Requested Party shall return a proof of service in the manner specified in the request.

ARTICLE 14

Search and Seizure

1. The Requested Party shall execute a request for the search, seizure and delivery of any article to the Requesting Party if the request includes the information justifying such action under the laws of the Requested Party and it is carried out in accordance with the laws of that Party.

2. The Requested Party may refuse a request if it relates to conduct in respect of which powers of search and seizure would not be exercisable in the territory of the Requested Party in similar circumstances.

3. Every official who has custody of a seized article shall certify the continuity of custody, the identity of the article and the integrity of its condition in the form indicated in Appendix C to this Treaty. No further authentication or certification shall be necessary in order to establish these matters in proceedings in the territory of the Requesting Party. Certification under this Article may also be provided in any other form or manner as may be prescribed from time to time by either Central Authority.

4. The Central Authority of the Requested Party may require that the Requesting Party agree to terms and conditions which the Requested Party may deem necessary to protect third party interests in the item to be transferred.

ARTICLE 15

Return of Documents and Articles

The Central Authority of the Requesting Party shall return any documents or articles furnished to it in execution of a request under this Treaty as soon as is practicable unless the Central Authority of the Requested Party waives the return of the documents or articles.

ARTICLE 16

Assistance in Forfeiture Proceedings

1. The Parties shall assist each other in proceedings involving the identification, tracing, freezing, seizure or forfeiture of the proceeds and instrumentalities of crime and in relation to proceedings involving the imposition of fines related to a criminal prosecution.

2. If the Central Authority of one Party becomes aware that proceeds or instrumentalities are located in the territory of the other Party and may be liable to freezing, seizure or forfeiture under the laws of that party, it may so inform the Central Authority of the other Party. If the Party so notified has jurisdiction, this information may be presented to its authorities for a determination whether any action is appropriate. The said authorities shall issue their decision in accordance with the laws of their country and the Central Authority of that country shall ensure that the other Party is aware of the action taken.

3. A Requested Party in control of forfeited proceeds or instrumentalities shall dispose of them according to its laws. Either Party may transfer forfeited assets or the proceeds of their sale to the other Party to the extent permitted by their respective laws, upon such terms as may be agreed.

ARTICLE 17

Compatibility with Other Arrangements

Assistance and procedures set forth in this Treaty shall not prevent either of the Parties from granting assistance to the other Party through the provisions of other international agreements to which it may be a party, or through the provisions of its national laws. The Parties may also provide assistance pursuant to any arrangement, agreement, or practice which may be applicable between the law enforcement agencies of the Parties.

ARTICLE 18

Consultation

1. The Parties, or Central Authorities, shall consult promptly, at the request of either, concerning the implementation of this Treaty either generally or in relation to a particular case. Such consultation may in particular take place if, in the opinion of either Party or Central Authority, the expenses or other resources required for the implementation of this Treaty are of an extraordinary nature, or if either Party has rights or obligations under another bilateral or multilateral agreement relating to the subject matter of this Treaty.

2. With respect to any matter for which assistance could be granted under this Treaty, neither Party shall enforce any compulsory measure requiring an action to be performed by any person located in the territory of the other Party, unless the Party proposing such enforcement has first exhausted the procedures established in paragraphs (3) and (4) of this Article.

3. If a Party is aware that its authorities are intending to take measures referred to in paragraph (2) of this Article, its Central Authority shall inform the other Central Authority, who may request consultations. If the other Party is aware of or considers that the authorities of the first Party have taken or are about to take any such measures, its Central Authority may request consultations. Thereafter, the Central Authorities shall consult with a view to determining whether the assistance sought can be provided under this Treaty, or otherwise resolving the matter.

4. Where consultations fail to resolve the matter, or unreasonable delay may be jeopardizing the successful completion of a proceeding, either Central Authority may give the other written notice to that effect.

5. Unless otherwise agreed by the Parties, the obligations under paragraphs (2), (3) and (4) of this Article shall have been fulfilled 21 days after receipt of this written notice, provided that this is not less than 60 days after receipt of the request referred to in paragraph (3) above.

6. Even in those cases in which the Parties, obligations under this Article have been fulfilled, each party shall continue to exercise moderation and restraint.

ARTICLE 19

Definitions

1. For the purposes of this Treaty, "proceedings" means proceedings related to criminal matters and includes any measure or step taken in connection with the investigation or prosecution of criminal offences, including the freezing, seizure or forfeiture of the proceeds and instrumentalities of crime, and the imposition of fines related to a criminal prosecution.

2. In addition, the Central Authorities may at their discretion treat as proceedings for the purpose of this Treaty such hearings before or investigations by any court, administrative agency or administrative tribunal with respect to the imposition of civil or administrative sanctions as may be agreed in writing between the Parties.

ARTICLE 20

Territorial Application

This Treaty shall apply:

1. in relation to the United Kingdom:
 - (a) to England and Wales, Scotland, and Northern Ireland; and
 - (b) to the Isle of Man, Channel Islands and to any other territory for whose international relations the United Kingdom is responsible and to which this Treaty shall have been extended by agreement between the Parties, subject to any technical modifications agreed by the Parties and to either Party being able to terminate such extension by giving six months, written notice to the other through the diplomatic channel; and
2. to the United States of America.

ARTICLE 21

Ratification and Entry into Force

1. This Treaty shall be ratified, and the instruments of ratification shall be exchanged at London as soon as possible.
2. This Treaty shall enter into force upon the exchange of instruments of ratification.

ARTICLE 22

Termination

Either Party may terminate this Treaty by means of a written notice to the other Party. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

Done in duplicate at Washington this sixth day of January 1994.

For the Government of the
United States of America:

For the Government of
the United Kingdom of Great
Britain and Northern Ireland:

Appendix A

CERTIFICATE OF AUTHENTICITY
OF
BUSINESS RECORDS

I, _____, attest on penalty of criminal
(Name)

punishment for false statement or false attestation that I am
employed by _____
(Name of Business from which documents are produced)

and that my official title is _____. I further
(Official Title)

state that each of the records attached hereto is the original or
a duplicate of the original of records in the custody of

_____. I further
(Name of Business from which documents are produced)

state that:

A) such records were made at or near the time of the
occurrence of the matters set forth, by (or from information
transmitted by) a person with knowledge of those matters;

B) such records were kept in the course of a regularly
conducted business activity;

C) the business activity made the records as a regular
practice; and

D) if any of such records is not the original, such record is
a duplicate of the original.

Signature

Date

Sworn to or affirmed before me, _____.
(Name)

a _____, this ____ day of _____, 199
(notary public, judicial officer, etc)

Appendix B

ATTESTATION OF AUTHENTICITY OF FOREIGN PUBLIC DOCUMENTS

I, _____, attest on penalty of
(Name)

criminal punishment for false statement or attestation that my
position with the Government of _____
(Country)

is _____ and that in that position I am
(Official Title)

authorized by the law of _____
(Country)

to attest that the documents attached and described below are true
and accurate copies of original official records which are recorded
or filed in _____
(Name of Office or Agency)

which is a government office or agency of the Government of

(Country)

Description of Documents:

(Signature)

(Title)

(Date)

Appendix C

ATTESTATION WITH RESPECT TO SEIZED ARTICLES

I, _____, attest on penalty of criminal
(Name)

punishment for false statement or attestation that my position with
the Government of _____
(Country)

is _____. I received custody of the articles
(Title)

listed below from _____ on _____, at
(Name of Person) (Date)

_____. I relinquished custody of the articles listed
(Place)

below to _____ on _____ at
(Name of Person) (Date)

_____ in the same condition as when I received them
(Place)

(or, if different, as noted below).

Description of Articles:

Changes in condition while in my custody:

Official Seal

Signature

Title

Place

Date

UK/US EXCHANGE OF NOTES REGARDING THE APPLICATION OF THE MLAT

UK INITIATING NOTE

Your Excellency,

I have the honour to refer to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters (the Treaty) signed today. I have the honour to propose that the Treaty be applied in accordance with the provisions set out in this Note.

(a) The term "important public policy" in Article 3(1)(a) would include a Requested Party's policy of opposing the exercise of jurisdiction which in its view is extraterritorial and objectionable.

(b) Article 3(1)(b) shall not affect the availability of assistance in respect of other participants in the offence for which assistance is requested who would not be entitled to be discharged on the grounds of previous acquittal or conviction.

(c) Article 7(2) shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution or law of the Requesting Party in a criminal prosecution. Any such proposed disclosure shall be notified by the Requesting Party to the Requested Party in advance.

(d) The Treaty shall not apply to anti-trust or competition law investigations or proceedings at this time. The Central Authorities may at their discretion treat as proceedings for the purposes this Treaty such anti-trust or competition law matters, or anti-trust or competition law matters generally, as may be agreed in writing between the Parties at a later date.

(e) "Compulsory measures" in Article 18, including in the case of the United States a grand jury subpoena, are those measures that require an action to be performed by any person located in the territory of the Party not issuing the measure and that fall within the following categories:

- (i) any measure for the production of evidence located in the territory of the Party not issuing the measure;
- (ii) any measure relating to assets in the territory of the Party not issuing the measure; or
- (iii) any measure compelling a natural person who is in the territory of one Party to make a personal appearance in

the territory of the other Party unless:

- a) the Party compelling the appearance has lawfully obtained jurisdiction over that person; or
- b) the person is a national of the party compelling the appearance,

without prejudice to whether a Party objects to these compulsory measures or the jurisdiction claimed by the other Party.

The Central Authorities may add to or amend the categories referred to above as may be agreed in writing between the Parties.

(f) In the spirit of cooperation, mutual respect, and good will, and in the interests of facilitating the cooperative use of the Treaty with respect to proceedings that fall within its scope and of avoiding measures which could result in a conflict of laws, policies, or national interests, the United States Government shall take several practical measures to reduce the number of instances in which conflict may be anticipated. In particular, the United States Department of Justice, on behalf of the United States Government, shall;

(i) instruct all federal prosecutors not to seek compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty unless the United States Central Authority has concluded that the provisions of Article 18 of the Treaty have been satisfied;

(ii) instruct all federal prosecutors not to enforce any compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty, unless the United States Central Authority has concluded that the provisions of Article 18 have been satisfied; and

(iii) undertake to discourage the issue of compulsory measures by other United States Government agencies for evidence located in the United Kingdom in any matter covered by the Treaty by advising all such agencies not to seek such process without consultation and coordination with the United States Central Authority.

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Treaty.

I have the honour to convey to Your
Excellency the assurance of my highest
consideration.

www.secretsreporter.com

USA REPLY NOTE

January 6, 1994

Excellency:

I have the honor to acknowledge receipt of Your Excellency's Note of today's date, which reads as follows:

"I have the honour to refer to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters (the Treaty) signed today. I have the honour to propose that the Treaty be applied in accordance with the provisions set out in this Note.

(a) The term "important public policy" in Article 3(1)(a) would include a Requested Party's policy of opposing the exercise of jurisdiction which in its view is extraterritorial and objectionable.

(b) Article 3(1)(b) shall not affect the availability of assistance in respect of other participants in the offence for which assistance is requested who would not be entitled to be discharged on the grounds of previous acquittal or conviction.

(c) Article 7(2) shall not preclude the use or disclosure of information to the extent that there is an obligation to do so under the Constitution or law of the Requesting Party in a criminal prosecution. Any such proposed disclosure shall be notified by the Requesting Party to the Requested Party in advance.

(d) The Treaty shall not apply to anti-trust or competition law investigations or proceedings at this time. The Central Authorities may at their discretion treat as proceedings for the purposes of this Treaty such anti-trust or competition law matters, or anti-trust or competition law matters generally, as may be agreed in writing between the Parties at a later date.

(e) "Compulsory measures" in Article 18, including in the case of the United States a grand jury subpoena, are those measures that require an action to be performed by any person located in the territory of the Party not issuing the measure and that fall within the following categories:

- (i) any measure for the production of evidence located in the territory of the Party not issuing the measure;
- (ii) any measure relating to assets in the territory of the Party not issuing the measure; or

(iii) any measure compelling a natural person who is in the territory of one Party to make a personal appearance in the territory of the other Party unless:

- a) the Party compelling the appearance has lawfully obtained jurisdiction over that person; or
- b) the person is a national of the party compelling the appearance,

without prejudice to whether a Party objects to these compulsory measures or the jurisdiction claimed by the other Party.

The Central Authorities may add to or amend the categories referred to above as may be agreed in writing between the Parties.

(f) In the spirit of cooperation, mutual respect, and good will, and in the interests of facilitating the cooperative use of the Treaty with respect to proceedings that fall within its scope and of avoiding measures which could result in a conflict of laws, policies, or national interests, the United States Government shall take several practical measures to reduce the number of instances in which conflict may be anticipated. In particular, the United States Department of Justice, on behalf of the United States Government, shall;

(i) instruct all federal prosecutors not to seek compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty unless the United States Central Authority has concluded that the provisions of Article 18 of the Treaty have been satisfied;

(ii) instruct all federal prosecutors not to enforce any compulsory measures, as referred to in Article 18(2), with respect to any matter for which assistance could be granted under the Treaty, unless the United States Central Authority has concluded that the provisions of Article 18 have been satisfied; and

(iii) undertake to discourage the issue of compulsory measures by other United States Government agencies for evidence located in the United Kingdom in any matter covered by the Treaty by advising all such agencies not to seek such process without consultation and coordination with the United States Central Authority.

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Treaty.

I have the honour to convey to Your Excellency the assurance of my highest consideration."

I have the further honor to inform Your Excellency that the foregoing proposals are acceptable to the Government of the United States of America and that Your Excellency's Note and this Note shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Treaty.

For the Secretary of State:

US/UK DRUGS AGREEMENT EXCHANGE OF NOTES

UK INITIATING NOTE

Your Excellency,

I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the Investigation of Drug Trafficking Offences and the Seizure and Forfeiture of Proceeds and Instrumentalities of Drug Trafficking signed at London on February 9, 1988 (the Drug Agreement), and to the recent successful conclusion of the negotiation of a Treaty on Mutual Legal Assistance in Criminal Matters between our two Governments (the Mutual Legal Assistance Treaty). In furtherance of our Governments' cooperation and desire to ensure that the Drug Agreement shall remain in force notwithstanding the entry into force of the Mutual Legal Assistance Treaty, I have the honour to propose that the Drug Agreement be amended by deleting the text of Article 16 and inserting the following:

"ARTICLE 16
Amendments

This Agreement may be amended by agreement in writing between the Parties."

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an agreement between our two Governments which shall enter into force on the date of Your Excellency's note in reply.

I have the honour to convey to Your Excellency the assurance of my highest consideration.

USA REPLY NOTE

January 6, 1994

Excellency:

I have the honor to acknowledge receipt of Your Excellency's Note of today's date which reads as follows:

"Your Excellency,

I have the honour to refer to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America Concerning the Investigation of Drug Trafficking Offences and the Seizure and Forfeiture of Proceeds and Instrumentalities of Drug Trafficking signed at London on February 9, 1988 (the Drug Agreement), and to the recent successful conclusion of negotiations for a Treaty on Mutual Legal Assistance in Criminal Matters between our two Governments (the Mutual Legal Assistance Treaty). In furtherance of our Governments' cooperation and desire to ensure that the Drug Agreement shall remain in force notwithstanding the entry into force of the Mutual Legal Assistance Treaty, I have the honour to propose that the Drug Agreement be amended by deleting the text of Article 16 of the Drug Agreement shall be amended by deleting the text of Article 16 and inserting the following:

Amendments

This Agreement may be amended by agreement in writing between the Parties.'

If the above proposal is acceptable to the Government of the United States of America, I have the honour to propose that this Note and Your Excellency's reply to that effect shall constitute an Agreement between the two Governments which shall enter into force on the date of Your Excellency's note in reply.

I have the honor to convey to Your Excellency the assurance of my highest consideration."

I have the further honor to inform Your Excellency that the foregoing proposal is acceptable to the Government of the United States of America and that your Excellency's Note and this Note shall constitute an agreement between our two Governments, which shall enter into force on this day.

For the Secretary of State:

EXH. C

UNITED STATES DEPARTMENT OF JUSTICE
CRIMINAL DIVISION



3-9-05
(1510)

IMPORTANT: This facsimile is intended only for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this transmission or its contents is strictly prohibited. If you have received this transmission in error, please notify us by telephoning and returning the original transmission to us at the address given below.

TO: AUSA Kendell Wherry, USAO, MDFL (Orlando)
Phone: 407 648 7500
Fax: 407 648 7643

FROM: Louani Bascara, Paralegal, Office of International Affairs
Phone: 202 616 0559
Fax: 202 514 0080
Email: Louani.Bascara@usdoj.gov

DATE: March 9, 2005
SUBJECT: Dariyc - U.K. Statutes
NUMBER OF PAGES (INCLUDING COVER): 16
MESSAGE: As requested, please see the attached U.K. statutes. Thank you for your assistance.

- (a) and (b) (Identical to section 327(a) and (b) set out above).
- (c) he acquired or used or had possession of the property for adequate consideration;
- (d) (Identical to section 327(2)(c) set out above).

329 – (3) For the purposes of this section –

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;
- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;
- (c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

Definition of criminal conduct and criminal property.

Section 340 of the Proceeds of Crime Act 2002 provides:

340 – (1) This section applies for the purposes of this Part.

340 – (2) Criminal conduct is conduct which –

- (a) constitutes an offence in any part of the United Kingdom, or
- (b) would constitute an offence in any part of the United Kingdom if it occurred there.

340 – (3) Property is criminal property if –

- (a) it constitutes a person's benefit from criminal conduct, or it represents such a benefit (in whole or part and whether directly or indirectly), and
- (b) the alleged offender knows or suspects that it constitutes or represents such a benefit.

340 – (4) It is immaterial –

- (a) who carried out the conduct;
- (b) who benefited from it;
- (c) whether the conduct occurred before or after the passing of this Act.

340 – (5) A person benefits from conduct if he obtains property as a result of or in connection with the conduct.

340 – (6) If a person obtains a pecuniary advantage as a result of or in connection with conduct, he is to be taken to obtain as a result of or in connection with the conduct a sum of money equal to the value of the pecuniary advantage.

340 – (7) References to property or a pecuniary advantage obtained in connection with conduct include references to property or pecuniary advantage obtained in both that connection and some other.

340 – (8) If a person benefits from conduct his benefit is the property obtained as a result of or in connection with the conduct.

340 – (9) Property is all property wherever situated and includes –

- (a) money
- (b) all forms of property, real or personal, heritable or moveable;
- (c) things in action and other intangible or incorporeal property.

340 – (10) the following rules apply in relation to property –

- (a) property is obtained by a person if he obtains an interest in it;
- (b) references to an interest, in relation to land in England and Wales or Northern Ireland, are to any legal estate or equitable interest or power;

(c) references to an interest, in relation to land in Scotland, are to any estate, interest, servitude, or other heritable right in or over land, including a heritable security.

(d) references to an interest, in relation to property other than land, include references to a right (including a right to possession).

340 – (11) Money laundering is an act which –

(a) constitutes an offence under section 327, 328 or 329;

(b) constitutes an attempt, conspiracy, or incitement to commit an offence specified in paragraph (a);

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom.

340 – (12) For the purpose of a disclosure to a nominated officer –

(a) references to a person's employer include any body, association or organisation (including a voluntary organisation) in connection with whose activities the person exercises a function (whether or not for gain or reward), and

(b) references to employment must be construed accordingly.

340 – (13) References to a constable include references to a person authorised for the purposes of this Part by the Director General of the National Criminal Intelligence Service.

Penalties.

Section 334 of the Proceeds of Crime Act 2002 provides:

334 – (1) A person guilty of an offence under section 327, 328 or 329 is liable –

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or to a fine or both.

334 – (2) (Not relevant).

Assisting another to retain the benefit of criminal conduct.

Section 93(A) of the Criminal Justice Act 1988 provides:

93(A) – (1) Subject to subsection (3) below if a person enters into or is otherwise concerned in an arrangement whereby –

(a) the retention or control by or on behalf of another ('A') of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or

(b) A's proceeds of criminal conduct –

(i) are used to secure that funds are placed at A's disposal; or

(ii) are used for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he is guilty of an offence.

93(A) – (2) In this section references to any person's proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of criminal conduct.

93(A) – (3) Sets out (among other matters) conditions under which disclosure of suspicion or belief to a constable about any funds or investment prevents any act done in breach of subsection (1) from being treated as a breach, if the act is done with the consent of a constable, or the disclosure is made on the person's initiative and as soon as it is reasonable for him to make it.

93(A) – (4) In proceedings against a person for an offence under this section it is a defence to prove –

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct; or
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used, as mentioned in subsection (1) above; or
- (c) that –
 - (i) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (3) above in relation to the arrangement; but
 - (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(b) above.

93(A) – (5) Not applicable.

93(A) – (6) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding fourteen years or a fine or to both.

93(A) – (7) In this part of this Act 'criminal conduct' means conduct which constitutes an offence to which this Part of this Act applies or would constitute such an offence if it had occurred in England and Wales or (as the case may be) Scotland.

Acquisition, possession or use of proceeds of criminal conduct.

Section 93(B) of the Criminal Justice Act 1988 provides:

93(B) – (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

93(B) – (2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

93(B) – (3) for the purpose of subsection (2) above –

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

93(B) – (4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purpose of subsection (2) above.

93(B) – (5) Where a person discloses to a constable a suspicion or belief that any property is, or in whole or in part, directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a constable any matter on which such a suspicion or belief is based –

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise; and
- (b) if he does any act in relation to that property in contravention of subsection (1) above, he does not commit an offence under this section if –
 - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the constable; or
 - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.

93(B) – (6) For the purposes of this section having possession any property shall be taken to be doing an act in relation to it.

93(B) – (7) In proceedings against a person for an offence under this section it is a defence to prove that –

- (a) he intended to disclose to a constable such a suspicion, belief or matter as is mentioned in subsection (5) above; but
- (b) there is a reasonable excuse for his failure to make the disclosure in accordance with paragraph (b) of that subsection.

93(B) – (8) Not applicable.

93(B) – (9) Identical to section 93(A)(6) above.

93(B) – (10) No constable or other person shall be guilty of an offence under this section on respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provisions of this Act or of any other enactment relating to criminal conduct or the proceeds of such conduct.

Concealing or transferring proceeds of criminal conduct.

Section 93(C) of the Criminal Justice Act 1988 provides:

93(C) – (1) A person is guilty of an offence if he –

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.

93(C) – (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he –

(a) conceals or disguises that property; or

(b) converts or transfers that property or removes it from the jurisdiction, for the purpose of assisting any person to avoid prosecution for an offence to which this Part of this Act applies or the making or enforcement in his case of a confiscation order.

93(C) – (3) In subsections (1) and (2) above, the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership, or any rights with respect to it.

93(C) – (4) Identical to section 93(A)(6) above.

Corruption.

Section 1 of the Prevention of Corruption Act 1906 (as amended) provides:

1 – (1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business, or

If any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal;

he shall be guilty of a misdemeanour and shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.

1 – (2) For the purposes of this Act the expression 'consideration' includes valuable consideration of any kind; the expression 'agent' includes any person employed by or acting for another; and the expression 'principal' includes an employer.

1 - (3) A person serving under the Crown or under any corporation or any borough, county or district council, or any board of guardians, is an agent within the meaning of this Act

1 - (4) For the purposes of this Act it is immaterial if -

- (a) the principal's affairs or business have no connection with the United Kingdom and are conducted in a country or territory outside the United Kingdom;
- (b) the agent's functions have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom.

Restraint and Confiscation Proceedings in the United Kingdom.

The Criminal Justice Act 1988 as amended by the Criminal Justice Act 1993 and the Proceeds of Crime Act 1995 [hereafter referred to as "the CJA 1988 (as amended)"] applies in this case because all the offences with which the defendant would be charged are qualifying offences (referred to in the CJA 1988 as amended as "relevant criminal conduct") namely indictable offences (other than drug trafficking or terrorism offences) from which he has benefited and which were committed after 1 November 1995.

Pursuant to the CJA 1988 (as amended), once a defendant is convicted of an offence to which Part VI of the CJA 1988 (as amended) applies, the Crown court may hold a confiscation hearing either prior to sentencing him or up to six months after the date of conviction. If the court is of the opinion that there are exceptional circumstances, it may postpone the confiscation hearing beyond the six-month period.

The Crown Court must determine whether the Defendant has benefited from any relevant criminal conduct. A Defendant's relevant criminal conduct arises from all offences of which she is convicted in the same proceedings *together with any that he asks to be taken into consideration.*

A Defendant benefits from an offence if he obtains property as a result of, or in connection with, its commission, and his benefit is the value of the property so obtained.

The prosecution if it considers appropriate can serve a notice upon the Crown Court declaring that it is their opinion that this is the case in which it is appropriate for the court to apply the assumptions. Accordingly, the Crown Court has discretion to make the assumptions that the Defendant's lifestyle is financed from the proceeds of his criminal conduct.

Those assumptions are:-

1. That any property appearing to the court-
 - i. to be held by the Defendant at the date of conviction or at any time in the period between that date and the determination in question, or
 - ii. to have been transferred to him at any time since the beginning of the relevant period, was received by him at the earliest time when he appears to the court to have held it, as a result of or in connection with the commission of offences to which this Part of this Act applies;
1. that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of offences to which this Part of this Act applies; and
2. that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time, he received the benefit free from any other interests in it.

Once the Crown Court has made the assumptions, the onus is on the Defendant to rebut them by demonstrating to the Court that she obtained the property or made the expenditure from legitimate sources.

The Crown Court should not make the assumptions if the assumption is shown to be incorrect in the Defendant's case or if the Crown Court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption was to be made in relation to that property or expenditure.

Once the Crown Court has decided upon the amount of the benefit, it must go on to consider the amount of realisable property held by the Defendant that may be available to satisfy the confiscation order.

Realisable property is widely defined. It includes any property in which the Defendant holds an interest (interest includes right) and any property that has been given by the Defendant to another for little or no consideration. The Crown Court, in coming to the decision, may take account of any property held by the Defendant wherever it is situated in the world.

If the Crown Court finds that the amount of the realisable property held by the Defendant is less than the amount of the benefit, the Court must make a confiscation order against the Defendant in the lower amount.

The High Court may make a restraint order prohibiting any person from dealing with any realisable property:

- a) where proceedings have been instituted in England and Wales against a Defendant for an offence to which part VI of the Criminal Justice Act 1988 (as amended) applies,

- b) those proceedings have not been concluded and;
- c) there are reasonable grounds for thinking that a confiscation order has been made.

The purpose of the restraint order is to prohibit the Defendant dealing with realisable property so that the realisable property can be utilised for the satisfaction of the confiscation order.

Similar, but different, provisions apply in respect of offences where the relevant criminal conduct relates to money laundering offences under the Proceeds of Crime Act 2002 arising from general criminal conduct.

These provisions apply where a person has been convicted of an offence within Schedule 2 of the Proceeds of Crime Act 2002, where the offence has been committed after the 24th February 2003. The court must determine whether the defendant has a 'criminal lifestyle' within section 73. A person has a criminal lifestyle if either he is convicted of one of the offences specified in Schedule 2 to the Act (including an offence contrary to section 327 (concealing etc criminal property) or 328 (assisting another to retain criminal property) of the Act and if it decides that he does the court must then decide whether he has 'benefited from his general criminal conduct'. General criminal conduct is defined as 'all his criminal conduct' whether occurring before or after the passing of the Act or whether property constituting a benefit from conduct was obtained before or after the passing of the Act (section 76(2)).

For the purpose of deciding whether a defendant with a criminal lifestyle has benefited from his 'general criminal conduct' and if he has the extent of his benefit the court is required by section 10 of the Act to make a number of assumptions, unless the assumption is 'shown to be incorrect' or there would be a 'serious risk of injustice' if the assumption were made. If the court is satisfied about these matters the court then has to determine the recoverable amount for the purposes of section 7 of the Act. It does this by taking the benefit from the general criminal conduct as the starting point for calculation and then making any reduction required by section 7(2) of the Act where the available amount is less than the benefit.

The substance of the four assumptions which the court must make under section 10 of the 2002 Act is closely aligned with the earlier legislation. These are that first: any property transferred to the defendant within the period of six years ending on the day on which proceedings were started was obtained by him as a result of his general criminal conduct; second: any property held by him at any time after the date of

conviction was obtained by him as a result of his general criminal conduct and at the earliest time at which he appears to have held it; third: any expenditure incurred by him within a period of six years ending with the date on which the proceedings were started against him was met from property obtained by him as a result of his general criminal conduct and four: any property obtained or assumed to have been obtained by the defendant was free of any other interest in the property.

If the court decides that the defendant does not have a criminal lifestyle it then looks at whether or not he has benefited from his 'particular criminal conduct'. In deciding this issue the court may not make any of the assumptions under section 10, but it may order the defendant to give the court the 'information specified in the order' (under section 18) and if the defendant fails to comply the court may draw such inferences as it believes are appropriate (section 18(4)).

Documentary evidence - admissibility.

Section 24 of the Criminal Justice Act 1988 (as amended) provides:

24(1) Subject -

- (a) to subsection (3) and (4) below; and
- (b) to paragraph 1A of Schedule 2 to the Criminal Appeal Act 1968;

a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible if the following conditions are satisfied -

- (i) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office and
- (ii) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had or may reasonably be supposed to have had personal knowledge of the matters dealt with.

(2) Sub-section (1) above applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it -

- (a) in the course of a trade, business, profession or other occupation; or
- (b) as the holder of a paid or unpaid office.

(3) Subsection (1) above does not render admissible a confession made by an accused person that would not be admissible under section 76 of the Police and Criminal Evidence Act 1984.

(4) A statement prepared otherwise than in accordance with section 3 of the Criminal Justice (International Co-operation) Act 1990 or an order under paragraph 6 of Schedule 13 to this Act or under section 30 or 31 below for the purposes -

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation;

shall not be admissible by virtue of subsection (1) above unless -

- (i) the requirements of one of the paragraphs of subsection (2) of section 23 above are satisfied; or
- (ii) the requirements of subsection (3) of that section are satisfied; or
- (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances to have any recollection of the matters dealt with in the statement

(5) This section shall not apply to proceedings before a magistrates' court inquiring into an offence as examining justices.

Section 23 of the Criminal Justice Act 1988 (as amended) provides:

(1) Subject -

(a) to subsection (4) below; and

(b) to paragraph 1A of Schedule 2 to the Criminal Appeal Act 1968 (evidence given orally at original trial to be given orally at retrial);...

a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if -

(i) the requirements of one of the paragraphs of subsection 2 below are satisfied or

(ii) the requirements of subsection 3 below are satisfied.

(2) The requirements mentioned in subsection (1)(i) above are -

(a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;

(b) that -

(i) the person who made the statement is outside the United Kingdom; and

(ii) it is not reasonably practicable to secure his attendance; or

(c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.

(3) The requirements mentioned in subsection 1(ii) above are -

(a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and

(b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.

(4) (Identical to section 24(3) set out above).

(5) (Identical to section 24(5) set out above).

Section 25 of the Criminal Justice Act 1988 (as amended) provides:

(1) If, having regard to all the circumstances -

(a) the Crown Court -

- (i) on a trial on indictment;
- (ii) on an appeal from a magistrates' court; or
- (iii) on the hearing of an application under section 6 of the Criminal Justice Act 1967 (application for dismissal of charges of fraud transferred from magistrates' court to Crown Court; or
- (iv) on the hearing of an application under paragraph 5 of Schedule 6 to the Criminal Justice Act 1991 (application for dismissal of charges in certain cases involving children transferred from magistrates' court to Crown Court; or

(b) the criminal division of the Court of Appeal; or

(c) a magistrates' court on a trial on an information,

is of the opinion that in the interests of justice a statement which is admissible by virtue of section 23 or 24 above nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

(2) Without prejudice to the generality of subsection (1) above it shall be the duty of the court to have regard to -

- (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;

- (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
- (c) to the relevance of the evidence that it appears to supply to an issue which is likely to have to be determined in the proceedings; and
- (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them.

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EXH. D

TAB D

COMMISSIONER'S SUBPOENA

UNITED STATES DISTRICT COURT

DISTRICT OF _____

TO: _____

I, Commissioner _____, an Assistant United States Attorney for the _____ District of _____, acting under the authority of the Treaty between the United States of America and the United Kingdom on Mutual Assistance in Criminal Matters, and under Title 28, United States Code, Section 1782, for the purpose of rendering assistance to the United Kingdom, command that you appear before me in Room _____, in the building located at _____, in the city of _____, in the state of _____, at _____ a.m./p.m., to provide testimony/documents regarding an alleged violation of:

the laws of the United Kingdom,
namely, [major violation or violations]
among other alleged violations,

and that at the time and place aforesaid you provide the following:

For failure to attend and provide testimony/said documents, you will be deemed guilty of contempt and liable to penalties under the law.

Dated:

COMMISSIONER _____
Assistant United States Attorney for the
_____ District of _____
Telephone (____) ____-____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

IN RE: Request from the United Kingdom
Pursuant to the Treaty Between
the United States of America
and the United Kingdom on Mutual
Assistance in Criminal Matters
in the Matter of Joshua Chibi Dariye

Case No. 6:05-MC-39-Orl-19DAB

ORDER

Upon application of the United States, and upon review of the request from the United Kingdom seeking evidence under the Treaty on Mutual Assistance with the United Kingdom, and the Court having fully considered this matter,

IT IS HEREBY ORDERED, pursuant to the authority conferred by the Treaty between the United States of America and the United Kingdom on Mutual Assistance in Criminal Matters, __UST__ (Senate Treaty Document 104-2), as well as 28 U.S.C. §1782 and this Court's inherent authority, that Kendell W. Wherry is appointed as a Commissioner of this Court and is hereby directed to execute the Treaty request as follows:

1. take such steps as are necessary, including issuance of commissioner's subpoenas, to collect the evidence requested;
2. provide notice with respect to the collection of evidence to those persons identified in the request as parties to whom notice should be given (and no notice to any other party shall be required);
3. disclose such copies of this Order as is necessary to accomplish the purposes of the request for assistance, notwithstanding that this Order may be filed and

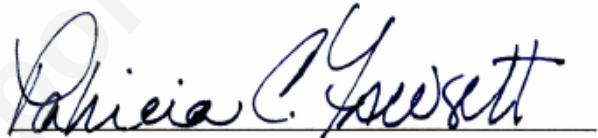
maintained under seal;

4. adopt procedures to collect the evidence requested, consistent with its use in the investigation or proceeding for which the United Kingdom has requested assistance, which procedures may be specified in the request or provided by or with the approval of the United Kingdom Central Authority under the Treaty;

5. seek such further orders of this Court as may be necessary to execute this request; and

6. certify and submit the evidence collected to the Office of International Affairs, Criminal Division, United States Department of Justice, or as otherwise directed by that office for transmission to the United Kingdom.

IT IS FURTHER ORDERED that, in collecting the evidence requested, the Commissioner may be accompanied by persons whose presence or participation is authorized by the Commissioner, including, without limitation, special agents of the Federal Bureau of Investigation and/or representatives of the United Kingdom.

A handwritten signature in black ink, reading "Patricia C. Fawsett", written over a horizontal line.

PATRICIA C. FAWSETT, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: March 29, 2005

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