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RECOVERING DICTATORS' PLUNDER

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

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RECOVERING DICTATORS' PLUNDER

THURSDAY, MAY 9, 2002

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC.

The subcommittee met, pursuant to call, at 10:02 a.m. in room 2128, Rayburn House Office Building, Hon. Spencer Bachus, [chairman of the subcommittee], presiding.

Present: Chairman Bachus; Representatives Royce, Kelly, Gillmor, Hart, Tiberi, Waters, Sherman, Maloney of New York, Moore, and Lucas of Kentucky.

Chairman BACHUS. Good morning. Today we will hear from a group of distinguished panelists on what the international community is doing—— and what more can be done—— to address the causes and consequences of political corruption that is so widespread throughout the developing world. The subcommittee's particular focus will be on efforts to recover stolen assets and other proceeds of corruption and return them to the rightful owners in the countries that have been plundered.

In the last Congress, Ms. Waters and I held hearings in the Domestic and International Monetary Policy Subcommittee on the transition taking place in Nigeria from a military regime plagued by rampant corruption to a functioning democracy marked by impressive economic and social reform.

Nigeria is, of course, something of a poster child for what can happen to a country when it is hijacked by corrupt public officials who enrich themselves at the expense of those they are sworn to serve. The notorious military dictator, Abacha, aided and abetted by a host of cronies and family members, systematically looted the Nigerian treasury of literally billions of dollars over the course of his brief, 5-year rule, leaving behind a desperate, impoverished country when he died in 1998.

Efforts to identify and repatriate Abacha's ill gotten gains have spanned the globe, following money trails to private banking departments in New York and London money center banks, as well as to more obscure locations such as the bank secrecy havens of Luxembourg and Liechtenstein.

The bulk of Abacha's stolen treasure ended up in various Swiss bank accounts. To their credit, Swiss authorities launched an intensive investigation of Abacha's accounts in 1999. Just last month, a landmark settlement was reached among Switzerland, Nigeria, Abacha's survivors and four other countries where Abacha funds

were deposited, that will result in the return of $1 billion to the Nigerian government. We will hear more about this settlement from our witnesses at today's hearing.

For countries already struggling with deep—seated poverty, hunger and disease, the human toll exacted when corrupt government officials divert public resources for private gain is devastating. So long as corruption thrives in so many places around the globe, efforts to improve the living standards and the conditions of people living in poverty, whether through debt relief, foreign assistance or capital investment, can never fully succeed.

What can the United States and other developing countries do, and why should they do it? First, we can require as a condition of U.S. and international financial assistance that recipient countries implement meaningful anti-corruption measures to prevent such aid from being misappropriated or used for anything other than its intended purposes.

Second, we can work with our G–7 partners and other governments to deny safe haven to funds that have been spirited out of the country by corrupt political regimes. As the Abacha case demonstrates, the global banking system can easily be exploited by those seeking to conceal or launder the proceeds of political corruption. A concerted international effort involving close cooperation among regulators, law enforcement authorities and financial institutions is absolutely essential for dealing effectively with future Abachas.

In this regard, two key provisions of the U.S.A. Patriot Act developed by this committee last fall will reduce the attractiveness of the U.S. as a destination point for ill-gotten gains of corrupt foreign officials. First, the new law expands the list of foreign predicate offenses on which the U.S. Government can base a money laundering prosecution to include the misappropriation, theft or embezzlement of public funds by or for the benefit of a public official.

Second, the Patriot Act requires U.S. financial institutions to apply enhanced security to private bank accounts maintained by or on behalf of senior political figures and their immediate family members or close associates to facilitate the detection and reporting of transactions that may involve the proceeds of foreign corruption.

At today's hearing, we will hear testimony from seasoned investigators and asset recovery specialists who are uniquely qualified to provide the subcommittee with a report from the front lines of the battle against global corruption.

Second, and I am going to depart from my written statement at this time. I think the question is why is it in the United States' best interest? Why is it critical that we help fashion a solution to getting these assets back? The short answer is that the world is becoming a chaotic, dangerous place for all of us because of this very corruption.

You take a look around the globe at all those problem areas, areas that we are being drawn into, areas that could cause us to be involved in military action, and without exception part of the problem has been and continues to be corruption of government officials.

We will hear some testimony today about the PLO, the fact that the PLO has corrupt officials in it that are diverting money that

is not going to the Palestinian people. As a result, a lot of what we see on TV about the unrest in the Middle East corruption, is a contributor to that, the fact that the corruption actually prevents and retards any ability to bring peace in the Middle East.

Slobodan Milosevic looted his government. Argentina, one of our biggest economic problems in the western hemisphere, fell victim to corruption and looting of its national treasury. Afghanistan, we are trying to support and establish a stable government there. The Taliban looted the national treasury of Afghanistan recently. That compounds our problems there.

In a number of small and not so small countries throughout the developing world, there are cases where the government, the present government, is struggling because the national wealth was looted, and when they came to power the resources were simply not there for infrastructure or for addressing the needs of the people.

Finally, I say that the World Bank and the IMF, international agencies, could do much more. A lot of the assistance they are giving is being skimmed off, diverted and ends up in the pockets and the bank accounts of corrupt government officials, not for the purpose it was intended, which in some cases creates a worse situation or does create a worse situation than you had to begin with, because the assistance not only is not given, but the country to which it was supposed to have been given has got to pay that money back, which creates even more debt.

[The prepared statement of Hon. Spencer T. Bachus III can be found on page 42 in the appendix.]

In order to have any successful debt relief, in order to have any successful efforts to help impoverished countries, we have to, number one, put an end to the corruption. To do that, it is going to take a comprehensive program. Therefore, that is why we have brought together this distinguished panel.

At this time I will recognize the Ranking Member, Ms. Waters.

Ms. WATERS. I would like to thank you, Chairman Bachus, for organizing this hearing on Recovering Dictators' Plunder. I especially appreciate your continuing interest in justice for the people of Nigeria and other countries that have been plundered by dictators.

I first became interested in this issue when I learned that the family of Sani Abacha had laundered millions of Nigeria's stolen assets and accounts at Citibank, an American financial institution. General Abacha's sons, Muhammad and Ibrahim, first became clients of Citibank Private Bank in 1988. They began by opening accounts in London and later opened accounts in New York.

Citibank provided the Abacha sons with a number of secrecy measures. According to a November, 1999, hearing by the Senate Permanent Subcommittee on Investigations, Citibank provided Abacha family members with three special name accounts and accounts in the name of a shell corporation, Morgan Procurement. The London account held as much as $60 million at one time. The New York accounts usually held about $2 million, but in one 6 month period saw deposits and withdrawals of almost $47 million.

The Domestic and International Monetary Policy Subcommittee of the Banking and Financial Services Committee held a hearing on May 25, 2000, on Nigeria in Transition under the leadership of Chairman Bachus and myself. Extensive evidence was presented at

this hearing regarding the laundering of Nigeria's stolen assets in American financial institutions. However, no action has been taken by the United States Government to identify these stolen assets and facilitate their return to the people of Nigeria.

On April 17, 2002, we understand the government of Nigeria reached a settlement with Sani Abacha's family. Under this agreement, the Abacha family will return more than $1 billion in assets to Nigeria. The family will be permitted to keep about $100 million. The assets that will be returned will come from banks in Switzerland, Britain, Luxembourg, Liechtenstein and the English Channel Islands.

Unfortunately, none of the funds laundered in Citibank or other American banks were included in the settlement. Nevertheless, the Abacha settlement does provide an illustration of methods to identify stolen assets and facilitate their return to the country from which they were stolen.

It may be possible to apply these methods to assets stolen by other dictators such as Marcos of the Philippines, Mobutu of Zaire, Baby Doc Duvalier of Haiti, Slobodan Milosevic of Yugoslavia, Suharto of Indonesia and the Taliban of Afghanistan. However, future efforts to identify stolen assets should include assets laundered in American financial institutions.

Today I will introduce the Stolen Assets Recovery Act of 2002. This bill will require the Secretary of the Treasury to submit a report to the Congress on the possibility that stolen assets may be laundered in financial institutions in the United States.

The report would include an explanation of U.S. Government efforts to identify stolen assets, mechanisms available to the U.S. Government to identify stolen assets and legislation that could be enacted to facilitate the return of stolen assets to the people of the countries from which they were stolen.

The legislation would also require the Secretary of the Treasury to urge the International Monetary Fund and the World Bank to provide the U.S. copies of all audits and other information possessed by these institutions regarding the use of funds loaned to dictatorial governments and other governments where corruption has been a serious problem.

It is essential that the United States of America support efforts to identify assets stolen by dictators and their families and facilitate the return of those assets to the people from whom they were stolen. I look forward to the testimony of the witnesses on the recovery of assets stolen by Sani Abacha and other dictators.

Mr. Chairman, let me just say that there are any number of instances where we have learned that our banks have been in receipt of money that has been stolen from citizens in other countries. Mexico is one of them. We discovered that Citibank used concentration accounts where they wire transferred money offshore. In many of these places where dictators have stolen the money from people and the money ends up in our banks, we are giving financial aid or foreign aid or assistance to them in one way or the other. I think it is outrageous and ridiculous.

I guess we are going to hear about the settlement that took place with Nigeria and the Abacha family, and I guess there is some justice in that, but even that is ridiculous, and still again it does not

account for those dollars that found their way into American banks. There are a lot of other instances of that.

I just hope that we can move forward in some way beyond this Nigeria settlement and not just see this Nigeria settlement as the way to go, but dig a little bit deeper and find out how we can discourage our banks from being part of the raping of these countries by these dictators. Sheltering these assets in our institutions is outrageous and ridiculous.

I thank you so very much for paying attention to this issue.

Chairman BACHUS. Thank you. I would simply like to respond to the Ranking Member by saying I think she and I both recognize the incredible cost not only to the people of these countries, but to the United States and to the taxpayers here, of corruption.

It has a direct impact on our military budget, on our defense budget, in that we are required to have a presence in countries or have military in countries where otherwise we may not need a military presence.

It constitutes a tremendous security threat to our country, as we found out on September 11, because in some of these countries, and I think Professor Chege can comment, money from these countries actually found its way to Al-Qaida and was used to finance the terrorist attacks of September 11, a direct result of corruption in these countries where the G–7 countries, the world organizations, apparently looked the other way and took no actions.

We will continue to pay a tremendous price as a country if we and other countries do not move against this and clean up our own house. I for one believe the United States as a result of the Patriot Act is leading the way. I believe a lot of what happened in the United States could not happen today because of laws which we have already enacted.

We will either as a country lead an effort or participate in an effort to clean this up, or we as a people will suffer. Whether we suffer by oil embargoes, whether we suffer by becoming involved in a war in the Middle East, whether it is another embassy bombing, we will pay the price if we ignore this.

With this I will introduce the panelists. Professor Michael Chege is director of the Center for African Studies at the University of Florida-Gainesville where his principal teaching focus is the comparative politics of African states.

Professor Chege, a native of Kenya who previously taught at the University of Nairobi in Kenya, the Graduate Institute of International Studies in Geneva and was a fellow at Harvard Center for International Affairs, currently is conducting research on the role of the military in the transition to more democratic governance in Africa.

I believe he brings a personal perspective in that his home country has fallen victim to this very corruption that we are talking about, and his fellow countrymen are facing poverty and disease as a result of that very corruption, so he has seen it happen on a firsthand basis to his fellow Kenyans.

John Conyngham is founder and director of the 150 member international corporation investigations team at the London based Control Risks Group, Ltd. The team, operating out of 12 offices worldwide including three in the U.S., does investigations ranging

from pre-employment screening through fraud investigation and prevention, investigative due diligence and asset searches for both government and corporate clients.

A former prosecutor of tax evasion and drug related charges in England, he also is Deputy Principal Crown Counselor in Hong Kong specializing in fraud prosecutions and formerly was head of fraud prosecution for Crowe Associates U.K., Ltd.

Jack Blum, an expert on money laundering and offshore tax haven issues, is a partner in the Washington law firm Lobel, Novins and Lamont where he represents individuals, governments and corporations on international business transactions, corporate fraud, recovery of losses for victims of international, tax and antitrust matters.

He served as associate counsel for the Senate Committee on Foreign Relations and the Committee on Judiciary and was later special counsel to the Committee on Foreign Relations. He was involved in a number of well-known investigations, including BCCI, General Noriega's drug trafficking and Lockheed Aircraft's overseas bribes, which gave rise to the Foreign Corrupt Practices Act.

He has been a consultant to the United Nations Center on Transnational Corporations and to its Office of Drug Control and Crime Prevention. In fact, he presently chairs an experts group on international asset recovery of the U.N. Center for Transnational Corporations and its Office for Drug Control and Crime Prevention. The panel which he chairs has actually been charged by the U.N. with looking at the very subject we are testifying about today.

I welcome you, gentlemen, and we will go from left to right starting with Professor Chege. We welcome you to the hearing and look forward to your testimony.

STATEMENT OF PROFESSOR MICHAEL CHEGE, DIRECTOR, CENTER FOR AFRICAN STUDIES, UNIVERSITY OF FLORIDA-GAINESVILLE

Mr. CHEGE. Thank you very much, Mr. Chairman, Congresswoman Waters. I am so pleased to be here and appear before you this morning. I feel honored to have been asked to come and speak to you this morning.

My main qualification for appearing before you, as was stated by the Chairman, is that I grew up amidst a lot of poverty in colonial Kenya when it was still a British colony. I did not wear my first pair of shoes until I went to high school at age 15.

I have now a position as Professor of Political Science and Director of African Studies at the University of Florida. I have seen it all from a theoretical perspective. I have seen it all in practice, and it pains me that dictators in Africa and in other parts of the developing world continue to impoverish the poor people.

My principal qualification for appearing before you is that I grew up amidst poverty in colonial Kenya. I know it from a practical point of view.

It pains me, as somebody that studies Africa and studies the developing world, to see that dictators take resources and bank them abroad when children go hungry, when children that need vaccinations do not get them, when AIDS in some African countries affects a third of the population and nothing is being done about it.

Mr. Chairman, everybody who studies the developing world knows by now that bad governance is the root source of all the problems that afflict these countries from political instability to poverty to inability to provide schools and health services.

Most of the developing world has a population growth rate that is much, much higher than the rich developed countries of the west; a 2.6 percent population growth rate in Africa, 2.2 in the Middle East, two percent in South Asia.

Mr. Chairman, a growing population is a young population. Fifty percent of Africa's population is under 25 years old. When I appear on a street in Johannesburg or Nairobi I look old, Mr. Chairman, because everybody else is so much younger.

A young population requires vaccinations when they are children. They require health. They require education in grade school, in high school, in college. They require jobs. In an age where electronic transformation of information across the globe is so fast, they watch the wealthy countries on television, on video, on cable television, and they want it. We may not like what we see on those channels, but, believe me, they would love to have some of it.

A government that does not provide those services risks provoking a chain reaction of instability leading onto terrorism and into political instability, thuggery, drug trafficking and arms trafficking that affect us here in the United States as well.

I cite the case of Sierra Leone, Mr. Chairman. The dictators who misruled and abused the wealth of that country, which is based in diamonds and steel and iron and coffee and cocoa, between 1965 and 1992 produced a young and angry population that had nowhere to go, that had no jobs and that had lost any sense of hope.

In came Charles Taylor, the incumbent dictator of Liberia, a country that you know was founded by the United States as a colony after the end of the Civil War for freed American slaves. Charles Taylor, who is a drug kingpin and a war lord, sponsored the RUF, the Revolution United Front, in Sierra Leone.

While these young people were taught to collect diamonds, those diamonds eventually found their way to Charles Taylor and, as we now know, into and through his intermediary, Mr. Sanjivan Ruprah, who is now being detained by the government of Belgium; the pockets of Mr. Victor Bout, ex-KGB, who runs the largest arms bazaar underground in the whole world, the official supplier to Al-Qaida; Abu Sayyaf in the Philippines; and sundry terrorist groups in the Middle East.

Diamonds are the terrorists' best friend, Mr. Chairman, and now we are learning. Although Sierra Leone looked like a country that is way, way far away that we do not care about, we learned that through the linkages manufactured by Charles Taylor that we, too, became victims of this little, nasty war.

I will say something about President Mobutu of Zaire, who passed away in 1997 and had secreted $4 billion of that poor country into Swiss accounts, chalets on the French Riviera, chateaus in Switzerland, buildings in Europe, vineyards in Portugal, to leave the country poorer than he found it in 1964. The people of that country have not recovered.

There is no infrastructure to speak of, nor roads, nor telecommunications, nor schools, nor hospitals. In the midst of that,

they are caught up in one of the largest and most barbaric wars on the African continent.

The saga of Sani Abacha has already been mentioned. The Honorable Waters referred to it. It is already a well known story in the press. I could go on to my own country, Kenya.

Kenya, Mr. Chairman, was a showcase of African economic prosperity and development, the land of the safari, of hollywood movies, yes, of Lion King even. Today, Kenya is a sad situation. It is a sad situation because of the dictatorship of Daniel arap Moi, whose leader, Mr. Moi, is reputed to have $3 billion abroad, has systematically ruined the economic prosperity of that country; he, his family and his cronies.

Goldenberg, which we mentioned a little bit about earlier, is a case in point. Between 1991 and 1994, the government of Kenya, which is to say the dictator and his minions, decided to pass a law to give anybody who exported gold out of Kenya a 35 percent rebate of the value of that gold. That was by way of diversifying the export commodities of Kenya, which the World Bank and IMF had urged.

Some $3 billion, $4 billion, $5 billion dollars was paid out to cronies of the president through this way, but there was one problem, Mr. Chairman. Kenya has no gold. When the press and the courageous people of that country went over to Dubai and Switzerland to inspect the dummy corporations that supposedly received this gold, they found none of them.

Mr. Moi and his cronies have wealth secreted abroad that is equal to the total national debt of Kenya, which is rated at $8 billion. In the meantime, poverty has come to Kenya. It is no longer the golden land of the safari makers that it used to be. Aid coming into Kenya has been squandered systematically. HIV rates go up to 30 percent in some parts of the country; no support from the government that is worth talking about. Schools are falling apart.

Crime is rampant; so rampant that it has completely destroyed the prospect of tourism that used to earn that country a lot of money. I could go on, Mr. Chairman. We concentrate on Africa because Africa now has got the worst cases in these matters. It is also a region where the poor are growing poorer.

We could talk about the family dictatorships in our neighboring Middle East, which are also experts in this, the Duvalier dynasty in Haiti, the Marcos, the Samozas in Nicaragua, Suharto in Indonesia, Saddam Hussein—yes, he is an expert in this, too—the Russian "oligarchs" in the 1990s, all players in this macabre and tragic drama of Robin Hood in reverse, stealing from the poor in your own country to bank it to your rich self and your cronies abroad. Robin Hood in reverse ought to be stopped, Mr. Chairman.

What can your subcommittee do? A lot. I thank you for the work that you have done already. It gives me, my colleagues, my countrymen, a lot of poor people out there, a lot of heart that this great country has people in its own legislature that care.

Number one, let us never forget the courageous people who work in these countries to fight these dictatorships. Please, let us support democracy, transparency, accountability, civil rights, human rights. The most effective firewall against dictators who steal from their own people is democracy. Democracy, Mr. Chairman, is good

for your pocket. It is good for mine. It is good for the poor people in those countries.

Democracy empowers people to fight so that their taxes are not stolen. It empowers them so that they can write stories when the dictators steal money. It encourages them to shame their leaders when they fail to act.

Remember South Africa. We never gave up on Nelson Mandela and his colleagues. We applaud them because they have brought stability to that country and good governance, and the banking system works sufficiently. Another example is Aung San Suu Kyi in Burma. The list goes on. The United States Government should identify itself with those who fight for the rule of law, for transparency and for democracy.

Number two, Mr. Chairman. My suggestion. The era of unquestioned support for the U.S. Government for dictators abroad has come to an end. The IMF and the World Bank have unwittingly become the principal instruments in the multilateral international organization system to help in financing of development to promote government. They have succeeded in one respect, and that is to give Third World countries information technology, as well as technical support, to realize the market is the single, most important tool for lifting the poor out of poverty.

Poor people in Africa, Mr. Chairman, know how to work the market. If you give them a chance, they will do wonders. I have seen that in Africa. Many illiterate market women in West Africa are millionaires as I speak. It is their governments that impoverish Africans.

The IMF and the World Bank, insofar as national governance and cooperative governance are concerned, however, are a spectacular failure. In some cases they have utterly been complacent in the theft and depravity that these countries have suffered. The IMF and the World Bank continued giving money to Mobutu even as they knew that that money was going to Switzerland into secret bank accounts and to impoverishing the people of Zaire.

Right now, Mr. Chairman, the World Bank's president is on a first name basis with Mr. Moi. Can you believe that? Also, because the World Bank is providing its own employees and technical support to the Kenyan government they think that they can outsmart him.

Mr. Chairman, it is very difficult to outsmart these crooks and dictators. They did not get to where they are from nothing. From Saddam Hussein to the Duvaliers to Mobutu, they are smarter than we think. We may not admire what they do, but you cannot fault them for playing it well.

The Alan Meltzer report that was submitted to Congress in the year 2000 had some very interesting ways about how to reform this institution so that it —and the IMF—become accountable to us in the United States and also to the poor people that they serve. Please, let us use it as a way of getting reform.

Mr. Chairman, I want to stop there, but I want to conclude by saying that I know that I speak on behalf of a lot of poor people in Africa who I see and speak to every time I travel there. They look up to this country because it is a beacon of freedom, and no institution is a greater sign of that freedom than this legislature.

Mr. Chairman, please do not fail them.

[The prepared statement of Prof. Michael Chege can be found on page 46 in the appendix.]

Chairman BACHUS. Thank you. I appreciate your testimony very much.

Mr. Conyngham.

STATEMENT OF JOHN CONYNGHAM, ESQ., GLOBAL DIRECTOR OF INVESTIGATIONS, CONTROL RISKS GROUP, LTD., LONDON, ENGLAND

Mr. CONYNGHAM. Mr. Chairman, Members of Congress, good morning. As you rightly stated, I am the Global Director of Investigations from an English company headquartered in London, Control Risks Group.

May I begin my comments this morning by thanking the subcommittee very much indeed for the kind invitation to appear before you. It is indeed an honor to be here, and in the last few moments it has been a privilege to hear your opening addresses and indeed the moving address of Mr. Chege.

I have, Mr. Chairman, submitted some written testimony, and I would ask if that could be made part of the record of the hearing today.

Chairman BACHUS. That will be made a part of the record without objection.

Mr. CONYNGHAM. Thank you.

Mr. Chairman, what competence, if any, I have to appear before you today is from my past 12 years as an international investigator. During that period of time, companies that have employed me have been retained on a very significant number of asset tracing assignments. Some of those assignments have involved assets stolen from their countries by very highly placed government officials, if not heads of state.

I have mentioned in my written testimony some of the trials and tribulations of conducting that type of work where one comes across the secrecy of individuals, of companies, of financial institutions, and the complexities of offshore jurisdictions, of laws and of politics.

If I might present some brief personal thoughts at the outset of my comments, I think probably the most important thing that I may have said in my written testimony was the final words that I wrote, that with these monies they can build a far better future; they being the citizens of countries who have had their assets stolen by their former rulers.

Mr. Chairman, as citizens of our respective countries, we regularly witness the appearance of individuals who through honest endeavors and great skills accumulate great personal wealth, and we applaud them. As an international investigator, I have had the misfortune to witness on occasion the grotesque extravagances of those who have accumulated wealth through the practice of grand corruption, the diversional theft of huge sums of state monies for the personal enjoyments of those who have held the highest positions of trust in those countries and who the evidence has shown have abused such positions of trust from day one of that position in office.

The private palaces? I have been in some of them. The vast automobile collections and multi-story carports running into hundreds and hundreds of vehicles? I have seen them. The gold-plated everythings? I have on occasion had to touch them. When set beside the poverty of the countries that these individuals were elected to govern, in my experience, these objects become objects of very great distaste.

Mr. Chairman, may I thank the subcommittee for taking on this subject today. May I say that in a small piece of research that I conducted before I came here that you are not alone in the interest that you are showing. A year ago in January, 2001, the International Development Committee of the House of Commons held a series of hearings on corruption, corruption both internal and external to the United Kingdom. I have extracts from those hearings which I might pass up at a later stage that may be of some interest to you.

Can I just quote that a primary finding of the committee was that their investigation into corruption had revealed a lack of coherence, focus and determination across Whitehall, the area in London where our great Ministries of State are located, in tackling this subject. They went on to say, "This lack of focus and coordination is hampering efforts to tackle corruption and money laundering in the United Kingdom." I wonder if those comments could possibly be echoed elsewhere.

Moving from the domestic United Kingdom scenario to the world stage, it is my belief that major success in recovering the assets of corrupt former leaders will only truly succeed when there is focus, commitment, coordination, determination and coherence on an international basis.

If I could briefly address you on three issues that I touched upon in my written testimony which gets us maybe down to the mechanics of this exercise. First, the advantages of civil procedures over criminal procedures in asset recovery matters; second, the difficulties that can be caused by inappropriately presented evidence; and, lastly, and I do not wish to avoid this, the cost of worldwide asset recovery investigations.

In terms of the advantages of civil procedures or criminal procedures in these matters, sir, the traditional approach in cases of grand corruption is that the perpetrators of the acts must be publicly prosecuted. As a former prosecutor, I can readily identify and sympathize with that sentiment.

As an investigator, I have come to learn over the last 12 years that solely pursuing the criminal route does not necessarily bring the best results for the actual physical recovery of assets, and in the event of criminal action failing it may not return any assets at all.

For the provisions of mutual legal assistance treaties to come into play, in many instances charges must be in place. Charges must have been laid in the originating country, and for all sorts of reasons for an incoming administration to lay charges swiftly and with competence is in many instances very difficult indeed.

Have we seen President Suharto being charged with criminal offenses? I believe we have not. In the Abacha matter, the matter was further complicated by the fact that the gentleman concerned

had died by the time recovery actions were being commenced. That has proved to be a major hurdle at least in the United Kingdom when it came to the implementation of assistance under the Mutual Legal Assistance Treaty that was there.

The government departments that actually deal with mutual legal assistance requests are under resourced. The latest figures I have in the United Kingdom, there were 1,500 requests for mutual legal assistance in the United Kingdom, and there were eight members of the department that were meant to handle that and respond adequately to them.

The alternative or parallel approach to the civil law route has in fact many attractions. In the United Kingdom, the civil law approach provides the recovery team with powerful and speedy weapons. Freezing orders and civil search warrants can be secured from High Court Judges on ex parte, single party proceedings with worldwide applicability.

This means that identified assets can be frozen prior to the defendant being aware that they have been located, and authorized search teams can enter the defendant's property and seize documents that may further assist in the tracing of assets before the defendant knew that anyone was coming.

The tests that the plaintiff must satisfy is that there is a strong prima facie case, a good, arguable case. The financial penalty for getting it wrong is heavy, but these are potent weapons that can be readied and activated at short notice. I commend this thought to you as the equivalent powers I am told do not exist in the United States.

Finally, as it regards civil proceedings, the standard of proof, that of the balance of probabilities, is far more achievable in many cases than the rigorous criminal standard in common law jurisdictions of proof beyond a reasonable doubt.

Moving on to inappropriately presented evidence, in my written testimony, as I said, I have tried to present a flavor of the complexities and hurdles of the investigative trail. If the investigative team confronts these complexities and jumps these hurdles, all will still be to no avail if on presenting the evidence in overseas jurisdictions it is found to have been prepared in a manner that is inappropriate for the procedures of that particular tribunal.

Why do I pick up on such a seemingly small matter? I do so because time and time again I have seen proceedings delayed or even abandoned because of unnecessary flaws in the evidential bundle. This type of detailed requirement puts a heavy responsibility on the domestic investigative team in a developing country that has just gone through a period of major political upheaval.

It is not a question of competence. It is simply a question of experience. The investigator may be dealing with the same small government teams overseas that I referred to a minute ago, or he will be dealing with external lawyers in multiple jurisdictions, many of whom will have had very little experience of these types of proceedings.

What is needed are the tools to collate the substantial volume of evidence that has been collected, the knowledge that insures that rules of evidence have been adhered to and the experience of having been there and done that before.

That, I suggest, leads to the need for a form of public/private sector initiative that combines the real experience of government anti-corruption specialists, the private sector probe and experience of relevant professional advisors, be they lawyers, accountants or investigators, coupled with the civil society demand, and I believe right, for better results in this area.

It would be seen in my view to be proof positive that the developed countries were prepared not merely to mouth good intentions, not simply to demand high standards of governance, but were prepared to provide practical assistance that produces tangible results.

Finally, sir, on costs I would touch on that matter very briefly, because I do not wish to avoid it. The costs of such work are high. Why is that? It is because these investigations are complex, they are time consuming, and they are multi-jurisdictional.

For real success to be achieved, they need seasoned, multi-disciplinary professionals with the armory of experience. Such individuals are entitled, in my view, to a fair market rate for their services.

This is a real concern for victim countries I have no doubt. I have personally heard that concern expressed in Abuja, Nigeria, I have personally heard it expressed in Islamabad, Pakistan, and I have personally heard it expressed in Jakarta, Indonesia.

For my company and many others in the field of operation, this field of operation's contingency fees are not an option. We have costs to bear today, as well as tomorrow, and the operational costs of investigation are very high, from travel to accommodation to the cost of documentation, translation, the collation of the evidence together using sophisticated software and increasing the costs of forensic examination of computers.

These things, Mr. Chairman, cost significant sums of money, and it is my belief that any international public/private partnership must contain within it the facility that will assist at least on an interim basis the costs of the asset recovery exorcist.

In conclusion, Mr. Chairman, I have no doubt whatsoever that this subcommittee can seek to influence in the right places and put in train a series of actions that could vastly improve the rates and amounts of recovery of dictators' plunder.

To speed you on your way, may I briefly return to the House of Commons' International Development Committee deliberations of January of last year. That committee discovered that the United Kingdom had ratified the OECD 1997 Convention on Corruption in 1998, but it had managed to do so, the United Kingdom, without enacting any new legislation stating that the legislation of 1889 and 1906 sufficiently covered the wording of the OECD Convention.

The International Development Committee was horrified when it heard that. Within a matter of months, the Secretary of State had put out a statement saying that it would be reviewed, and in November last year after the very sad and tragic events of September 11 when we were putting through our Anti-Terrorism Crime and Security Act the necessary amendments to cover the need to have extra territorial provisions against corruption was also enacted at that time so they had, sir, a real success. I wish this subcommittee a similar success.

Thank you.

[The prepared statement of John Conyngham Esq. can be found on page 51 in the appendix.]

Chairman BACHUS. Thank you.

Mr. Blum.

STATEMENT OF JACK A. BLUM, ESQ., PARTNER, LOBEL, NOVINS & LAMONT, WASHINGTON, DC

Mr. BLUM. Thank you, Mr. Chairman. I very much appreciate the opportunity to be here this morning, and I want to thank the subcommittee for its continuing attention to and interest in a subject which I think is one of the most important issues you could be dealing with.

I have a prepared statement. I ask that it be put in the record. Rather than reiterate what is in the prepared statement, I would like to focus on a couple of key points. Some of them pick up on the testimony you have just heard.

When a new government comes in after a country has been looted, they do not have very much to work with. I remember being in Guyana shortly after a new government came in, and the old crowd had taken everything—the chairs, the tables, the light bulbs, even the toilet paper. They did not know where to begin, much less how to go about trying to find where money had been taken, and where it had disappeared to.

The chaos that they have to deal with is such that they cannot do what has to immediately be done if you are to make a proper case to go recover money, which is immediately seize the relevant records, immediately get at the witnesses and get focused on how you are going to make your case.

The first thing a country needs in a change of government is immediate expert help in doing a proper investigation of what happened to the money and what are the problems. This means things like auditing what happened at para-statal companies like the Nigerian National Oil Company or one of the national mining companies.

Now, the second thing that the country needs is help in structuring the international piece of the investigation. We now have in place a whole series of mutual legal assistance treaties which a country can use to reach out and say please help us get this information, but the knowledge of how to meet the technical requirements of those treaties is very specialized.

Every country has technical requirements for mutual legal assistance requests. If you get it wrong, they bounce it back. They say get more stuff. Fill in the blanks. Give us more paper. Sometimes these treaties can only be triggered if you bring certain kinds of charges in the country that has been victimized, so there is a question of how to coordinate the criminal case in your own country with your efforts to gather information abroad.

Then there is the question of coordinating that with an effort to get the money, so in the Abacha case the problem was that everything that was done was done through the criminal process. In Europe, continental Europe, that makes a degree of sense because in the criminal process in the continental countries criminal and civil complaints are combined. It is very different than it is here, and most Americans cannot even conceive of this situation.

The victim of a crime is considered what is called a party civile. He can be a party to the criminal investigation. He sits with the examining magistrate as the examining magistrate interviews witnesses. He has access to all of the documents that have been gathered by search warrants and investigative orders of the examining magistrate, and he can use those in ongoing civil actions.

In the United States, it is a crime to reveal whatever a Grand Jury has found, so the prosecutors cannot share any of the material they get in the course of a criminal investigation with civil lawyers who are involved in the same process. It is an utterly different track.

In the case of Nigeria, what they did was they brought criminal complaints and then asked for mutual legal assistance and had subsequent criminal complaints of their own in the European countries, and that enabled them to get data and information through the criminal process in Europe.

Now, the problem that then ensued was that the countries that seized the money subject to these mutual legal assistance treaties and the criminal investigation said OK, we have the money, but we will not turn it over until you get a conviction. Of course, the criminal process in Nigeria is hopelessly broken. Ten years is a minimum time line for a criminal case. How do you get a conviction and then get the money if you have to wait 10 years? Maybe there will be a different government; and the money—who knows what will have happened.

That was a real problem for the Nigerians, and finally there was a problem that the principal perpetrator had died. Now, I visited Liechtenstein where some of this Nigerian money was, and I talked to all of the Liechtenstein officials who were dealing with it. They, in the wake of various laws that had been passed and the pressure from the international community, turned over a lot of information, and they froze a lot of money, but they were not going to turn it over to the Nigerians because Abacha's family had filed 24 different lawsuits in Liechtenstein to prevent the Liechtenstein government from releasing the money.

You can see that it became a huge legal tangle, and there were huge legal bills for the Nigerians to try and sort out what was going on in these different countries. In the United States and the U.K. the problem was that the Nigerians were not meeting either the standards of charging or the standards of proof required to do the freezing and carry forward with the case, and in the U.K. and the United States the Nigerians could not afford to hire proper counsel to do the job.

What do we need to solve this kind of problem? Well, we assembled, and John Conyngham was part of the group, a group of experts from around the world who participated in a variety of legal systems and recovery efforts, and they talked through a number of things that could be done to speed this process.

For example, in cases of grand international corruption why not allow evidence, Grand Jury evidence, to be used in a civil case? Why not allow the government access to some of that information that has been gathered so that they can go forward with a civil proceeding and freeze the money and maybe under Court supervision

with proper protective Orders and use that machinery to get around existing bank secrecy?

There was also the idea put forward that every banking institution, when it takes money in from someone who is potentially a person who is corrupt, should know that it takes that money in as a constructive trust for the victim of a crime. This is a concept that the Courts in the U.K. have adopted.

What they say is you, the bank, have taken this money and, therefore, if you give it out and let it out of your hands you, the bank, will be liable for the money because you have it in trust for the people of the country that was victimized, so perhaps an expansion of that concept of constructive trust would be useful.

Finally, what we need is some sort of driving engine to make this happen, the problem being that who has this expertise, where does a country go, who is going to give them the money and how will they get their feet on the ground to make things work, and how will they know as the many lawyers come in and have deals set up of I will do it on a contingent fee or the investigator says this is what it is going to cost. How do they know they are dealing with people who they can trust, and how do they fund the operation?

I put forward a proposal which is strictly my own which is an idea of creating an international revolving fund perhaps funded by donor countries, the World Bank, which would act as a funding mechanism for a country in this kind of mess to be replenished out of the recovery money. If you put enough money in to start with, you will get plenty of money back. That is our experience.

The revolving fund would enable also the country to either hire or perhaps through some sort of international agency, let us call it a public interest law firm or a foundation or perhaps some entity created under the U.N., to provide case management for the country.

Country X has a problem. You pick up the phone. You call this group, and you say look, we have a problem. Will you help us sort through what it is that we need, what we have to do, who we have to call and what are the likely jurisdictions we have to go to? Then the case management entity helps begin to help a country hire on the lawyers, the accountants, the investigators, the forensic experts who put the case together and get the money back.

Now, another alternative idea which has some appeal to me is the idea of setting up a foundation for recovering these assets and getting the country that has been victimized to assign the right to recover to the foundation. If you do that, you take away the political pressure to kill the investigation.

In a couple of countries, what we have seen is they start off hell for leather, and about 6 months out, the old corrupt folks pull things together and say "Wait a minute. We do not like what is going on." The investigation suddenly dies. All of the zeal that was shown initially to recover Suharto's assets suddenly sinks into nothing, and you do not hear about it anymore. If you assign it to another entity and it becomes a political problem to stop the investigation, it is a different matter, and that is another way of going at it.

I will give you one more thought, and that will be the concluding one, which is that we have to deal with the problem of the inter-

national lending institutions. The international lending institutions commendably have been talking about the corruption issue. They have also hired auditors, and lots of them, to investigate the disappearance of funds that they have lent. We all understand that a very substantial portion of the money has in fact disappeared.

The problem is under the existing system in the international lending institutions none of this is made public. They did an audit of Haitian loans. The upshot of the audit, everyone who knows about it has heard, is all the money disappeared, but they have refused absolutely and resolutely to make those loan documents and that record public.

My view is the problem is that all of the people who are the perpetrators are also sitting there as executive directors, or at least representatives of many perpetrator countries, and that really if you put together the question of do we go out and sue the folks who stole the money with guys who either are in the same situation or potentially stole it themselves, of course they are going to vote no.

We have to put into the international lending institutions a mechanism which says if you find that money has been stolen, you are going to assign the recovery to this international institution, and there is no going back, and there is no voting no, and there is no walking away from it. You will take every effort to find the money and really get it back for the country involved because the alternative is to lend them more money and then to take it out of the hides of the poorest people in the victim country by saying well, we have to send the IMF in to restructure.

If I look at some of the IMF proposed remedies for Argentina and I think of all the money that has been looted from that country, I think what an unfair thing. Go in and punish the victim for the fact that the money has been stolen when what you should be doing is chasing the crook. That to me is the direction we have to move in.

I really advocate the creation of an entity that can take on this effort and one that comes in under a kind of neutral international civil service status, but also that has the flexibility and the capability of what I would call an elite law firm that can move quickly and knows what it is about and is a little more nimble than perhaps the usual bureaucracy of the United Nations.

I have been searching for the way to create this and to get a debate going on the need for it because I think the need is obvious and essential. There have been efforts by the banks, by the way, to clean up what has gone on. They have assembled the Wolfsburg Group. They have come up with lists of people who should not have bank accounts. All of this is well and good, but I should remind you Europe has not yet passed key provisions of the Patriot Act.

I was in Brussels a couple of weeks ago talking to key officials of the European Union. They still have shell banks. They still have a whole series of arrangements that this Congress has quite commendably outlawed. I think that we have to talk to the Europeans, and we have to say look, this is the new international standard.

I think that this subcommittee has done an incredible job of closing a lot of loopholes and doors. What we now have to do is move it out, get it into the international arena and find the machinery

to implement what has been done here and find the ways of helping the countries that need the help.

Thank you for giving me the opportunity to testify.

[The prepared statement of Jack A. Blum Esq. can be found on page 61 in the appendix.]

Chairman BACHUS. Thank you, Mr. Blum.

Mr. Tiberi.

Mr. TIBERI. Mr. Blum, you mention in your testimony asset recovery and the World Bank. Do you think that the World Bank has a serious problem when it comes to this type of fraud?

Mr. BLUM. I think there is a real problem in terms of loan money that does not wind up going for the purpose intended or loan money that goes into projects and the projects are three times what they cost, three times what they ought to, or the bids are rigged, or there is something wrong, and somebody is taking a piece off the top.

I have seen it personally. I was in Kenya a number of years ago, and I was called later by a Kenyan who said help me. We are bidding on a contract to supply the material for a new hospital. They have asked us to put all of the equipment in the hospital, and we want to prepare a bid.

What we have discovered is they have specified certain brand names for certain equipment, and there is only one supplier who offers those brand names. They are telling us we cannot offer alternatives and that if we do not bid the whole package we cannot be accepted as a bidder. That is corruption.

I wrote on behalf of this company to Mr. Wolfensohn, and I got what I would consider a snotty letter back from the World Bank manager in Kenya who said it is none of our business it is a problem for the Kenyan government. Well, indeed it was a problem for the Kenyan government. It was probably the Kenyan government that was doing it. You are in a perfect Catch–22. There is no way to recover the money.

Mr. TIBERI. Why do you believe this problem exists that has not been rectified?

Mr. BLUM. The problem is that the people who have to vote on the issue of asset recovery and pursue it are the executive directors of the bank, and that includes a large block of people from countries where this problem is pandemic. You cannot get the people who are the heart of the problem to vote for the solution.

Mr. TIBERI. What type of language would be appropriate to require the bank to recover these funds?

Mr. BLUM. I think it is necessary to say as a condition of the loan you must, if there is an audit finding of some sort of fraud or irregularity, turn the matter over to a team separate and apart from the bank that will then engage in the civil effort to recover the money.

That should be irrespective of the wishes of the borrowing country and irrespective of the wishes of the bank itself. If there is evidence of fraud, the politics are out. It is not a matter to be voted on. It is a matter to move forward on.

Mr. TIBERI. Are you aware of any fraud involving U.S. export assistance?

Mr. BLUM. I cannot say that I have had that experience directly, but I would guess, knowing what I know, that one could find it if one looked.

Mr. TIBERI. Should we be concerned about fraud with the IMF as it applies to the IMF?

Mr. BLUM. I think the IMF has had some brushes with serious fraud. There was that marvelous case of the money that was given to Russia turning up in the Channel Islands. There was an audit report that was put out on that money disappearing. The next thing we knew was the audit report had been on the website for the IMF, and it suddenly disappeared. It went from being a public document to being a private document, and I thought that was kind of astonishing. I know although the report was public, I do not know what happened in terms of recovering the money.

I was in St. Petersburg about a year ago and talked to a number of Russian officials who are extremely interested in the problem of asset recovery because they understand that an enormous amount of the Russian national wealth disappeared over the last couple of years, and it has been floating around in Swiss banks and Austrian banks, and they have not got the expertise or the capability of going back and getting it.

Mr. TIBERI. There are some on Capitol Hill who would argue that because of problems both at the World Bank and IMF we should pull back as a set of policy. Would you concur, or do you believe reform is preferable?

Mr. BLUM. I think that if you travel the world and you look at the need, if you visit, as I have recently, places like Lagos, places like Kingston, Jamaica, you can see levels of poverty, despair and need that are just so overwhelming it is a folly for the United States to think that you can just walk away from it.

There is a basic premise that I have, which is that foreign problems become domestic problems. Whether it is the terrorists on 9–11, whether it is a disease that starts in a country where there is terrible poverty and then gets imported on a flight into the United States, whether it is a pollution problem that blows across an ocean.

Where there are huge economic and social problems, they will come to the United States. If they do not come in the form of a problem, they will come in the form of illegal immigrants. We have to face the fact that the problems of the world are ours, and we have to fund the international lending institution.

Mr. TIBERI. Based on past history, how do we begin down the path of insuring that there is some accountability on the other end?

Mr. BLUM. The accountability I think is in this prospect of civil recovery. You say to people look, you are borrowing the money. What we are going to tell you is if this money is stolen we are going to hound you to the end of the earth.

There will be no bank, no investment player who will be immune. We are also going to hound the lawyers, the accountants and the business people who will try to help you hide the money and help you steal the money because we are going to hold them accountable, too.

Mr. TIBERI. Thank you. One last question. We heard this morning about the role of the Swiss government and the Swiss banking

industry in efforts to identify and return the assets stolen from Nigeria.

Give us your assessment and track record of our government and the U.S. financial services industry in relation to assisting an international corruption.

Mr. BLUM. We have been quite proper in the way we have gone about responding to requests for mutual legal assistance. The problem has been we have very high legal standards, and we are approaching it from a point of view have they met our requirements for giving them the information? Have they given us exactly what we need? Have they charged the case in exactly the right way in the country where the request originated? That is one problem.

The second problem is resources. Just as in the U.K., we have a very small number of people who handle these requests. They are farmed out to Assistant U.S. Attorneys, and typically it goes to the junior U.S. Attorney in the office who has a significant other case load.

I, in fact, worked with a Swiss examining magistrate in a case, in fact a corruption case, where I helped him make an appointment directly with the Assistant U.S. Attorney so he could explain the requirements of Swiss law because the problem was that the U.S. Attorney had gathered the material, packed it up and sent it to Switzerland, but he met none of the evidentiary requirements of the Swiss court.

The Justice Department tries, but what we need are training programs for people which tells them what the evidentiary requirements are in foreign courts. We need more manpower. We need speedier responses.

Just to give you a sense of that, in a mutual legal assistance request the process goes from the police to the Justice Department to the State Department or foreign office of a foreign country, then over to the counterpart foreign office, then to the Justice Department, then down to the police. My rule of thumb is 2 weeks for every time a piece of paper moves from one desk to another minimum, usually a month. You can see that in a rapidly moving case that is disaster.

Mr. TIBERI. Thank you. I yield back the balance of my time.

Chairman BACHUS. Ms. Waters.

Ms. WATERS. Well, I would like to first thank our witnesses here today. Your testimony has been riveting.

I guess much of what I have heard I have discovered some of that in the past, and I am always very, very pained as I hear the graphic descriptions of the corruption and the plundering on the continent of Africa as I have heard today, but I also get very, very angry about our own financial institutions who accept the money from the dictators and help to shelter it with private bankers, and so forth.

I have put a little time in on one such case with the Salinas brother out of Mexico who had I think something in the neighborhood of $80 to $100 million in Citibank, and we are supposed to be the country that is strongest on "know your customer." As I recall, the Salinas brother did not even have a card on file, had no visible employment and was a drug dealer who eventually ended up in prison for the murder of someone.

For the life of me, I do not understand why that money was accepted in the first place at Citibank and how and what private bankers do in helping to purchase assets for many of these crooks in forming these concentration accounts where they lose identity and money is wire transferred offshore.

I do not like our domestic banks playing a role in this kind of money laundering or plundering or protection of money that is plundered from other countries, so I have concentrated a little bit on trying to figure out what we could do to make sure that we do not continue to play that kind of role.

While we talked today about Abacha and I am alluding a little bit to Salinas, there are other countries, particularly in Africa, who still have assets in our American banks. For one, I would like to see that money not only returned to the country where it was stolen under the right circumstances, and I do not know what you do about returning money to the same government that stole it in the first place. But I would also like to see some way by which a percentage of that money could be used to help establish organizations that would be involved in recovery so that it is not an additional cost to the United States or the countries, but it would be self-supporting, number one. Number two, that this money would be substituted for foreign assistance that we may be giving in some of these cases.

This is very complicated, as you have mentioned, but let me just try and ask this question. I guess someone alluded to some of these funds as supporting the Al-Qaida organization and supporting terrorism. I have heard that Al-Qaida was very involved in the export of a gem called tanzanite, and then I read recently that one of the well known jewelry chains in America, Zales, had stopped at one time selling tanzanite, but they are back as of a few days ago selling tanzanite again.

I understand this is a number one gem that somehow the Taliban and the Al-Qaida forces have access to in working with some of the leaders in Africa. I want to know what do you know about that, and if that is still going on what should we do about it?

Mr. CHEGE. Thank you very much, Congresswoman Waters. The case of tanzanite, again, is typical of the problem I was referring to in my testimony. And that is, terrorist organizations using African resources. When I say diamonds are the terrorists' best friend, I mean these terrorist groups just do not specialize in terror. They are also into regular business making money that finances these operations. We know here in the United States after 9–11 there was money coming in to fund the people that were living here and getting ready for those horrible, horrible deeds that day.

In the case of tanzanite, this is what we know. It is a precious stone that is mined in Tanzania and hence the name tanzanite. What the people in Al-Qaida and the terrorist movement did was they have dummy companies. These dummy companies are set up primarily in the Gulf Region, the United Arab Emirates, Dubai, that sponsor people to come into Tanzania and exploit these minerals.

They do not do it legally. They—the frontmen and dummy companies—do it under the shadow and through the instruments of

bribery into government so that they more or less secure mines of their own, they get the minerals and then ship it out of the country. Corruption within the Tanzanian government, and neighboring states, must be seen as a fast principal avenue to which these sort of operations are allowed to happen.

Second, because the terrorists and their front corporations do not want any of this stuff to appear in public, they would not want to go and be documented through customs of Tanzania, so it is brought out of the country through jet planes and through small planes, just like in the drug industry in South America and the United States that fly out undetected without logging in when they have come or left the country.

I would like to say that I am very, very pleased that you have been following the case of tanzanite, because it is another case, once again, that shows that illegalities taking place in faraway countries that we do not often think that affect rich countries do come back to haunt us. That applies as well to the case of diamonds in Sierra Leone in West Africa that I spoke about.

Ms. WATERS. Thank you very much. Thank you. I intend to continue to follow the tanzanite to see what we can do with that. I would like to talk with you a little bit more about that.

Thank you, Madam Chairwoman.

Ms. KELLY. [Presiding] I thank you. Your question is a very good one. I think it is very interesting. My colleague brought up the fact that Zales had stopped selling tanzanite. I suspect that had every jeweler in the United States of America joined Zales that would have been able to put an enormous amount of pressure, and perhaps we would have had a better resolution than having Zales wait it out for a bit and then come back in.

I am only sorry that there was not more unanimity on that, but perhaps that is one of the problems that we need to address with regard to the U.S. Patriot Act. The Patriot Act may need some tweaking. We tried to do some things with it.

Actually, Mr. Blum, that is really the question that I have for you. I was talking the night before last with the Ambassador of the European Union, and he, in presenting to this group, raised issues himself of transparency and questions of regulation. There are great problems because they are dealing with so many different governmental structures, but these governmental structures, if I understand your testimony correctly, created the context for the opportunity for theft.

It seems that perhaps we need to work through the IMF, through the World Bank, through our Patriot Act and through the EU to try to get everyone on the same line in terms of some of these, and it does not need to be large changes in our governmental laws in each country, but perhaps there is a way of our drawing up some kind of legislation that would help remove that context because the context in and of itself also creates a chill factor for U.S. investment in other countries to invest in a country where they know they are going to get involved in corruption.

I wonder, Mr. Blum, if you would elaborate on that a little bit. Do we need more teeth? Do we need more funding? Can we tweak that a little bit? How can we encourage nations to join us?

Mr. BLUM. We need some very expert thinking and a lot of mutual conversation. Let me try to explain that a little bit.

It is awfully hard to go to France and say gentlemen, you have to change a structure of your criminal law. That does not get you very far. Likewise, if you come to the United States and they say well, why do you not amend your criminal law to make it look like ours, that does not get you very far.

What we need are ways of getting people to agree to common themes and agree to accept each other's work in their own court. We need a working concept. NATO has a concept called interoperability where weapons of all NATO countries are similar so that NATO units can work together as a combined army.

The same kind of thing needs to go on in law enforcement. We need concepts of cross designation so a police officer in one country can be designated temporarily as working with the police force in another country and have police powers. We need the ability to move information from the criminal side to the civil side.

Now, there is a real opportunity here. There is a negotiation of a global anti-corruption convention that is about to begin. Those negotiations will begin this summer, and it is possible I think to use that as a way of figuring out how do we create better international machinery for cooperation not just in terms of facilitating the most formal kind of mutual legal assistance, but how to take a look at all of the different pieces of the puzzle, how to put the civil case in, how to find a machine for moving forward with asset recovery, what kind of mechanism will we use and again to set some standards. I think that is the place and the time that we can really come up with something.

Ms. KELLY. Thank you.

Mr. Conyngham, I would like to know if you have anything to add to that. I am going to ask you to try to condense what you say. Perhaps you could think about this because I need to go to the floor and vote, so I am going to ask that the subcommittee recess for a short recess. Either the Chairman or myself will be right back, but we have a vote on the floor, and it is a double vote, so I am going to have to go.

If you would think about what you would like to add to Mr. Blum's answer, and I would really like both of you to do that. I think this is a point of focus where we need to be, and we need to be thinking about it so we can send the people into this convention perhaps in a way with some fairly clear guidelines that might help us all.

With that, I am going to recess the hearing for a short recess. Thank you.

[Recess.]

Chairman BACHUS. [Presiding] Thank you. Mr. Conyngham, if you would like to respond to the question?

Mr. CONYNGHAM. Just to follow up, I think in terms of the opportunity that comes up this summer with the beginning of negotiations on the Global Anti-Corruption Treaty, then I think, sir, I would urge the United States to build on the huge work you have done with the Patriot Act and try and convince the European Union and other states to come in line with that.

We still have the position where shell banks cannot be forced to disclose their ownership. You have taken steps to change that in the United States, so that would be one very positive move. I think we need clarity as to the nature of offenses that adequately capture the nature of criminality that is encompassed within the concept of grand corruption.

I think, sir, we need to begin to think of ways as to how can we get banking institutions to really begin the change in the culture to say that a culture of secrecy in the world of 2002 is not as important as it was. That cultural change can only come from the very top, and I do not think we have total buy in to that. I do not think we have total buy in with banks that it matters that it ultimately affects their overall worldwide reputation as to who they bank with and why they bank with them and where that money is coming from.

If that message could begin to get around in stronger terms around the world, I think we would be in a better position. It is a culture that is there, the mode of secrecy, and it has to be changed.

Chairman BACHUS. Thank you.

Mr. Blum, you have said that the Palestinian authority is riddled with corruption. Would you comment on that? I know that they have received hundreds of millions of dollars in aid from Arab countries, and the Palestinian people have little to show for it.

Mr. BLUM. A number of years ago I was approached by people who were involved in trying to set up as part of the peace process industry and housing development in the West Bank and Gaza, and their complaint was that every time that they tried to get something going they were up against corruption.

I have heard it from people all over the Arab world that there is a real personal corruption problem among officials of the Palestinian authority. Now, I do not view that as terribly different than corruption in other places except when you think of the implications of it and the consequences for the United States and for peace in the region.

What you have is a situation where corruption is protected by ongoing conflict, and, therefore, the incentives to make peace and build are limited because then you have to actually use the money for the purpose you are talking about.

I really think that one of the unintended consequences—unintended is the wrong word. One of the other consequences of corruption is that it hides and masks violence, war and terror, and I think we have to address that. That is why I am so intent on trying to figure out what can be done to prevent corruption.

Chairman BACHUS. The war and the violence cover the corruption. As you understand the PLO, and, Mr. Conyngham, if you or, Mr. Chege, if you have any personal knowledge of this or what you have heard, there seems to be no accountability within the PLO, no transparency.

Mr. BLUM. It has that in common with dozens of other governments, but in this particular case the continued flow of money in is utterly dependent on continued difficulty and continued strife.

My point is that if you cut the strife, to cut the strife you have to cut the incentives, the business incentives, to keep the strife

going. If you cannot steal the money and you have to use it, maybe you will begin to focus on how to use it properly and forget about worrying about how to get more of it.

Chairman BACHUS. Should we as a country in our dealings with the Palestinian authorities as, you know, we have designated them as the voice of the Palestinian people, should we or should other countries which are working toward peace demand some accountability on the part of the——

Mr. BLUM. I think it is part of the conversation. I think it is part of the overall conversation that we have to have, and it is part of what has to go on in the peace arrangement.

I see the solution not as particularly targeting them, but as setting in place the global machinery because I think there are so many examples of it around the world that to look at any particular situation really does not get you very far.

What we have to do is talk about what are the global answers, and what we also have to focus on is the fact that the money invariably winds up in the markets of the OECD countries. Almost none of that money is kept on the ground on the spot, so really the issue will turn on how well we change our culture in the wealthy countries of the world and how we change the culture of the banking system and the legal culture.

What I would like to see is perhaps the prosecution of that infamous lawyer in Geneva who when you are elected head of state you go check in with him, and he will work out the plan for hiding the money. I would love to see that guy prosecuted. I would love to see him sued by some of the countries that were victimized. The day you get that lawsuit or that prosecution is the day every lawyer in the world goes out of that business.

Chairman BACHUS. Mr. Conyngham.

Mr. CONYNGHAM. Mr. Chairman, yes. I think there is a danger in going to these countries and saying you will have these standards of governance, this is what we require, this is the way we operate, when we have not in many parts of the developed world got our act together yet either.

I think in relation going back to the Abacha matter, when it was discovered that there were some 42 accounts linked to a batch of families in 23 banks in the United Kingdom, 15 of those banks had controls that fell beyond what was required under the anti-money laundering legislation and seven had serious discrepancies, and yet the regulator did not even name who those banks were, then I think we have a lot to get right on our own back door before we go perhaps preaching elsewhere.

I think it is the developed world that has got to take the lead in this and has to have the commitment to say we will take steps, we will stop these practices, and we will do it with legislation or conventions that have with them real teeth.

Chairman BACHUS. Several countries, including the United States, and I think we mentioned this, have outlawed the payment of bribes. It is my understanding that there are actually countries that allow you to take a bribe as a deduction on income tax.

Do you have any comment? Is it true that there are such countries?

Mr. BLUM. Mr. Chairman, there were until recently, but the OECD convention has now put that to rest. Germany was one country that was notorious for that very proposition. The delightful term that the Germans had for that kind of payment was Schmear Geld. It speaks for itself.

That has now changed because of the regional conventions, and virtually all of the developed countries in the OECD group and certainly everybody in the OAS has outlawed the paying of bribes. Now we have a convention coming that will be a global convention that will probably codify for every other signatory the same proposition.

The warning I would give you is while that is very positive and very good, the problem is that it is not just the payment of bribes. This is not just an issue of big companies wanting to sell an airplane, wanting to sell a weapons system, each one bribing and, therefore, that is the source of corruption.

It is a matter of skimming on the export of natural resources. It is a matter of stealing wealth internally in the country and taking it out, so it goes way beyond the bribery issue. I think it is a mistake to focus on it as a commercial bribery problem. It is much broader than that, and we have to look at it in a broader frame.

Chairman BACHUS. I see.

Mr. Sherman.

Mr. SHERMAN. Thank you. I would like to go to this OECD convention and the idea that it will prevent bribery. I am told that the usual business practice is you find a local person, perhaps a cousin of the dictator, you make that person your sales agent, you pay that sales agent five to 25 percent, and what that sales agent does for the money or with the money is beyond the understanding of anyone in the OECD countries, whether it be those examining tax collection or otherwise.

Is there anything in this convention that prevents the tax deduction or prohibits the payment of a Schmear Gell channel through a sales agent?

Mr. BLUM. In theory, yes. Your question about——

Mr. SHERMAN. So what particular law in say, Germany, would make it illegal for a German firm to pay a commission of up to 25 percent?

Mr. BLUM. The question I think in the end is really enforcement. It is can they do it.

Mr. SHERMAN. No. Is it even illegal? The German company can claim that it knows nothing. It pays the commission only if a sale is made, so it is hardly a risk. It builds its profit in the contract large enough so that a 25 percent sales commission or even a more modest sales commission.

Is there anything in all this window dressing and international kum-ba-yah singing that gets at this problem at all, or does it simply provide a little bit of work for the cousins of dictators?

Mr. BLUM. I would like to answer the question in the context of U.S. law. The way we deal with it is saying know or should have known. I think that there is a standard of that variety in the OECD convention.

Mr. SHERMAN. Has any company been prosecuted in the United States on the theory that having paid a sales commission they

should know whether the sales agent is being paid for charm and persuasive articulateness or whether that articulation takes the form of playing poker with the dictator and losing?

Mr. BLUM. I think the answer is yes, there have been, but I cannot cite that chapter and verse.

I think the essential point here is not just the criminalization of paying the bribe. It is finding a mechanism so that when the bribe has been paid and now a new government comes in giving you the machinery to——

Mr. SHERMAN. Yes. I realize the focus of this hearing——

Mr. BLUM. Let us sue that company. Sue them for corrupting the country involved and make them pay back. Let them be subject to a RICO action let us say here for their——

Mr. SHERMAN. Again, the most innocent of companies and the most guilty of companies doing business in the Third World are told you need a local partner or you need a local sales agent. An examination of exactly how many minutes of work this sales agent does or exactly what gratuities and entertainment they engage in—should have known is an interesting phrase, but it is the usual practice of American companies and especially European countries not to inquire.

I want to shift to another line here, and this may be more of a statement than a question. I think that these hearings are a subset of a whole bank secrecy/asset secrecy. I do not think that turning to a particular lawyer in Switzerland and prosecuting them as long as there is an avenue, a huge avenue or several, many huge avenues. The idea that the world will lack for road maps and guides available to dictators or others I think is absurd. The road is there.

If democracy means anything, it is the rule of law. If the rule of law means anything, it is that the laws not give just the appearance of creating a particular result, but that we actually plug the loopholes in them. We as a developed world or a world system have embraced this idea that dictators should not have secret accounts, that petty thugs should not be able to launder their money, that socially acceptable people should not engage in tax fraud, and yet the reality is the exact opposite. We believe in the rule of law, and yet we maintain huge loopholes in that law.

The result is that people in Europe and the United States who play by the rules pay taxes, and yet we have opened wider and wider highways, loopholes, tunnels for everyone engaged in entrepreneurship, whether it be honest entrepreneurship by someone who then cheats on their taxes or whether it be the entrepreneurship of stealing from the government of a Third World country.

We have these huge tunnels or openings or loopholes where it is entirely acceptable for Switzerland and the Cayman Islands to be in the business of laundering money, and then we give Switzerland maybe a few kudos because at the very highest profile criminals after they leave power and when they become incredibly unpopular in the world happen to have their money in a Swiss bank they might have wished that they put it in a Cayman Islands bank.

As long as the United States, and there is substantial support in this country and in this Congress for allowing tax fraud. There is hostility toward actually making the upper classes in this country pay their taxes. If the United States were serious about this, we

would be realizing that doing business with countries that have these bank secrecy laws is nothing more than an invitation to all the types of crimes I have mentioned.

I do not know if the panel has any comment. I know I am out of time, so the Chairman will have to decide whether the comment will be allowed.

Chairman BACHUS. You can respond to Mr. Sherman's question. I would be curious also to know what is your assessment of the Swiss and their willingness to cooperate and comply?

Mr. BLUM. We have as part of our experts group a Swiss examining magistrate who had actually worked on the Abacha case. He was getting complaints from the citizens of his canton, the Canton of Geneva, that Geneva was being asked to be policeman to the world.

His job is an elected job, so you can understand that this is a very complicated problem. He was trying to do that job in a very straightforward way and actually made considerable headway. I daresay it was the Swiss effort— his effort, Mr. Zucehin's effort and then his successor, Mr. Bertosa—who put enough pressure to get the money returned.

They have also brought under Swiss law cases against Russian gangsters, against a number of other malingerers, and they have opened up others. The Swiss require the identification through a Form A in the opening of any account of who the beneficial owner is. If you were to talk to the Swiss, and I am not here to defend the Swiss, they would say if you guys did the same things for Delaware corporations, we would be in a lot better shape.

They complain about our lack of speed in responding to mutual legal assistance. It is a very interesting thing to hear this coming from the other side. I think what we have to appreciate is not the problem of how we point fingers at each other and who has a loophole here or a loophole there; it is the fact that we are all fixated on our own legal systems, quite properly, and we tend not to see things from the perspective of other people. We tend then not to talk about how we are going to bridge those gaps. That is really the kind of conversation that has to occur.

I would say we have come a very long way on issues of offshore secrecy and tax evasion, but we have a ways to go. The way to go now is how to implement, how to enforce and how to make it work. The Patriot Act did some amazing things in that category. Now we have to get the Europeans to follow suit. We have to see if we cannot get people to do what has to be done on the ground.

Mr. CONYNGHAM. Mr. Chairman, I think, too, I am no apologist for the Swiss, but I do think they get very bad press in this kind of area. I think actually like many other jurisdictions, if the rules are followed and you know the procedures then you will get the result.

I can personally recall some now 12 or 13 years ago when I was still a prosecutor in Hong Kong getting assets in a fraud matter frozen temporarily by way of a phone call to the Swiss authorities, so I do believe that in the right circumstances that they comply well.

Chairman BACHUS. Thank you.

Mr. CHEGE. I just wanted to comment on the question of transparency in the developing countries and to stress once again that you have to attack this problem from two ends.

We focus a lot on what ought to be done in the OECD countries, but in countries of Africa, Middle East, Asia and Latin America there are people in the legal system, in civic groups, in church groups, in anti-poverty groups, that lay down their lives every day because they want to reverse this trend publicly and in the press. Let us think about it and write about it.

What we ought to do is give more support to those people so that they can make this fight a success. It is their own fight, but they need an extended hand of support from people that are working on the program from the other side. They have a lot of information. They are willing to do a lot, and it is important that we open up avenues of communication with them.

Chairman BACHUS. Mr. Royce.

Mr. ROYCE. Thank you, Mr. Chairman. I want to thank you for this hearing today.

I think that our witness who just made the point that we need to be giving our support to those people laying down their lives fighting for transparency rather than spending our time trying to focus on excusing those who are in the business of money laundering is a good point.

I think we should, frankly, be more into the business of naming and shaming, of going after first those who are stealing from their people and, second, those who provide the wherewithal for them to hide the funds.

You know, when we look at what General Abacha did to Nigeria, when we look at currently what Charles Taylor, Inc., as he is called, what Charles Taylor is doing to Liberia and to Sierra Leone in terms of diamond smuggling and clear cutting of forests and so forth, when we look at the same issue in terms of what Robert Mugabe is doing in Zimbabwe to the people there and Mugabe's cronies taking money out of that country, we are faced with the same reality, which is if we did a better job of removing the safe havens and exposing those who helped the Salinas take $100 million out of Mexico and then hide that money as the Congresswoman mentioned earlier. We are basically empowering people to rip off their countrymen.

One of the things that I think we ought to look at is changing the way in which business is done perhaps. You know, there comes a time where it is no longer sustainable for a foreign company to do business with corrupt regimes and then see the revenues plundered by certain people in government and then turn their heads.

A few weeks ago, the Africa Subcommittee that I chair held a hearing on the Chad-Cameroon pipeline, which is a new approach. I would just like to get your opinion on this. This project is the largest private sector investment in Africa. I think it is an innovative approach that is an unprecedented partnership between energy companies and NGOs and the World Bank and the governments of Chad and Cameroon, and it aims to maximize the development benefits of Chadian oil while avoiding the pitfalls that have plagued other such projects in the past, including the pitfall of corruption.

Specifically what happens here is at the World Bank's urging the Chadian government instituted a legal framework whereby 72 percent of the project revenue is devoted to education, is devoted to health and other social services and to infrastructure, and then ten percent is set aside for future generations.

There is an oversight committee including Chadian civil society members that monitor the project revenue. The World Bank will play a role in auditing oil accounts, which is a striking departure from the norm for the developing world, and that is to be made public. This is all to be totally transparent.

For these reasons, the World Bank has described the project as an unprecedented framework to transform oil wealth into direct benefits for the poor, the vulnerable and direct benefits to the environment.

I would like to know if our witnesses are familiar with the project at all and what they think of it in concept.

Thank you, Mr. Chairman.

Mr. CHEGE. I am familiar with the Chad-Cameroon project, and I agree with Congressman Royce that in fact when the World Bank says that it is an innovative project it really is because we are witnessing for the first time an element of accountability in the use of incoming money to a very weak government and a government that has a terrible record in human rights and democracy, being held accountable in how it uses its oil money.

There are two things to note about how the project came about. First, there was a huge outcry from international human rights groups and from global environmental organizations. Second, there was a huge outcry, especially from environmental groups in Africa, there was a huge outcry from Africans, from individual poor people, communities in the region who were going to be transplanted as this all was taking place that said please, for heaven's sake; you cannot trust the governments in these two countries with our money, with our resources, with our forests, with our game reserves that this pipeline is going through.

The elements of open discussion and debate weighs in, and that is what made this decision possible. Otherwise the World Bank was going to fund it like they had done elsewhere before and could have cared less about that accountability element.

Second, Mr. Chairman, the point I want to stress is that has this worked? Yes, up to a point. A few years ago the Chadian government went and bought arms with complete impunity and complete contravention of the allocations of the oil revenues. What could World Bank do about it? World Bank does not have an army. They cannot very well arrest the leaders of that country. There is a limit to how much and how far they can go. It is a test case, and we should see about it.

I should perhaps add as a footnote that the United States Government right now is very concerned with what is going on in the Sudan. We all know the tragic, tragic conditions there. Oil is a key player there because the Canadian company, Talisman and the Chinese and the Malaysians have put money into there.

Former Senator Danforth of the United States has been commissioned by the Bush Administration to be the key intermediary in that process, and they are also thinking about the same Chad

model in that country. I would not place a dime on the government of the Sudan honoring it. I am sure they will sign, but I cannot trust them to honor it.

Mr. ROYCE. Myself and Tom Sheehy, who is the staff director of the Africa Subcommittee, had a chance to talk to Senator Danforth on this subject, and it seems to me that I agree with you in concept about the likelihood that we are going to have trouble with the Khartoum government, but if the Khartoum government is going to go forward anyway in terms of developing the oil resources in the south is it perhaps not wiser, just like with Chad-Cameroon, to use what leverage we have if the Khartoum government is saying we are going to set aside 30 percent, or I think it is one-third of the oil revenue, for the people of southern Sudan, and we can pull into that NGOs and the World Bank and the international community?

Is it not wiser to try to leverage out of that an arrangement that commits that for infrastructure building and for health and education in the south? I mean, it is a bit of a Hobson's choice because, as you say, the corruption that we have seen in the north and certainly the hostility and the murder of 1.9 million people to date would lead you to believe it could be next to hopeless, but, on the other hand, if we have an opportunity here to try afresh if the government in Khartoum perhaps is saying, you know, this has been a lose-lose all the way around.

In Sudan, the standard of living is not increasing. Here is an opportunity for the south and the north to be prosperous, for the entire nation to be prosperous. If we can get an allocation that ends the civil insurrection, then perhaps it is worth us all doing all we can do and then trying to create as much transparency as possible in order to at least see if this could help the problem.

Mr. CHEGE. Mr. Chairman, I agree entirely with the Honorable Congressman, but it is better for the United States and U.S. corporations to be involved because it gives the United States much more leverage.

I do not agree with those who say cut out and leave because this government is so horrible, because if we do that then who is going to get in there? It is going to be the Malaysians and the government of China, and those countries are not—or the governments there—are not accountable to anybody, and they will physically get away with murder.

It is so much better to have U.S. companies, to have Canadian corporations involved in that project over there, because I think the leverage we have of getting something much better done than otherwise is always there. It is important that we support that.

Mr. ROYCE. I thank you. I thank the panel. My time has expired.

Thank you, Mr. Chairman.

Chairman BACHUS. Of course, we are financing the Malaysians and the Chinese in their oil exploration, so we are involved.

I relate the Sudanese government to Hitler. They both practice genocide on a grand scale. I am very uneasy as a matter of values for the American Government to do anything to share revenues with such a government that practices slavery today. The price of a slave in Sudan is $33 today.

Ms. Waters.

Ms. WATERS. I wanted to ask a question of Jack Blum, first of all, to thank you for your years of work. We have had the opportunity to work together on some other issues.

This may be taking us a little bit off of the beaten track here, but since we have worked on the problem of drugs, particularly as it related to Nicaragua and the crack cocaine explosion and all of that, I am just as worried about what is happening in Afghanistan.

Why is it we do not hear about what is happening with the poppy fields? If in fact those fields are being cultivated, why are we not saying something about it? Are we just turning a blind eye in the interest of the economy of Afghanistan?

Mr. BLUM. This is possibly one of the most complicated, atrocious problems that anyone could ever imagine. The gross national product of Afghanistan is heroin. In fact, that is their major export.

Now, for one year it ceased, but the Taliban government was built on the export of heroin to Europe and the money laundered by that export. That was the money that flowed back to support the Taliban.

The governments of Europe by and large paid no attention to what was going on or limited attention because for the most part the users of that heroin in western Europe were illegal immigrants in western Europe, so you had North Africans and other people in Paris who were there who were the prime users. The French say "Oh, we do not have a heroin problem." They just do not look at the whole population of France.

The problem we now have is that the revenue from this poppy is an essential element of the ability of the war lords who are supporting us and going after the Taliban, and we are in the dilemma of what do you do? Do you try to wipe out their crop and leave them broke and then pay them money, or do you let them grow the poppy and export the poppy?

That is the kind of stuff that is being debated and worried by various people in government positions. I daresay, it is a terrible, terrible dilemma because it is the only source of revenue these folks have. I think you are going to have to ask the State Department, and that is a set of questions where the people in INL and Narcotics Control should be put to the test. You know, what are you doing about it, and how are you going to handle it? It is a very thorny problem.

Ms. WATERS. Are they exporting through Pakistan, our ally in the fight against terrorism?

Mr. BLUM. That has been the route. In fact, one of the elements of the civil war leading up to the events after September 11, one of the elements was a lot of that civil war was based on a war over which way the heroin would flow. Would it go north through Uzbekistan, through the Northern Alliance country, or would it go south through Pakistan?

An awful lot of the insanity that was going on in Kashmir was financed out of that heroin flow because the Pakistani Secret Service was involved in helping support the flow. There were seizures of heroin coming down from Afghanistan along the Macran coast and then later in shipments to western Europe that were so large they could account for almost the entire world's heroin supply.

Ms. WATERS. And I understand we have an agreement that we will not chase anybody into Pakistan. We stop at the Afghanistan border.

Mr. BLUM. The problem of the corruption surrounding drugs on that route is absolutely astonishing. I have no faith at all that any agreement to chase or not to chase would make any difference.

Ms. WATERS. Thank you. I yield back.

Chairman BACHUS. Thank you.

Mr. Conyngham, you mentioned the Bermuda Triangle in your testimony, which is formed by offshore jurisdictions that refuse cooperation with investigators from other countries seeking to trace dirty money.

Mr. Royce mentioned the "name and shame". I think there was an initiative taken by the G–7's Financial Action Task Force to name and shame those jurisdictions.

Do you know the status of that? Has that been done, and has it had any effect on the fight against money laundering?

Mr. CONYNGHAM. I do not know the exact status of it. I believe Singapore has done something similar and so I do believe it is a way forward.

To tackle the idea of corruption, my own company about 3 years ago published a report called "Corruption Integrity, Best Business Practice in an Imperfect World." We put out fliers saying this book was coming out, and we got a lot of advance orders for it so it seemed to be very successful.

We said we will hold a seminar, and we will launch it properly. We put out the invitations to the seminars, and we got very few responses. We even got one fax that just had big letters on it. No. No. What seemed to be happening was that we had the companies that wanted to understand the issue, but they were not going to stand up in public and say we are actually dealing with it ourselves as well in Indonesia or in Malaysia or wherever it is around the world.

I think what we have to do now, and the name and shame is part of that, is to say the developed world is saying very firmly this is an issue. If you do not begin to deal with it, then maybe we cannot come and do business in your country, and maybe we cannot let you do business in our country.

I think there is obviously a balancing act through all of that, but I would be in favor. If you are not FATF compliant, then the money has had some effect, and can we do it with the corruption as well.

Chairman BACHUS. All right. Mr. Blum.

Mr. BLUM. I think that we have made some headway with that, and the countries that have been put on the list, many of them have said OK, we will cooperate.

The test now is can they cooperate, do they have the infrastructure for cooperation and have they done anything more than put up some window dressing in the front of well, we passed the laws you asked us to pass, and we have a guy you can call if you want information, but truth be tell he is working from 2:00 to 4:00 in the afternoon on alternate Tuesdays, and if we get 8,000 requests maybe in a year or two we will get to you.

That kind of thing is the problem that I see next, so the next step will be to force some kind of real compliance and then tell some jurisdictions they have no business doing it.

The smallest republic in the world is the Republic of Nauru. They have 10,800 people. The ratio of banks to people in Nauru is still outrageous. They are in non-compliance, and they have not given any interest in compliance.

Now, many of those banks are cutoff, and many will be cutoff in the next number of months because of the OECD initiative, but I do not believe Nauru could ever be compliant no matter what it did, not with 10,800 people. You cannot run a center.

Chairman BACHUS. What do we do to those notorious offshore banking centers?

Mr. BLUM. I think you treat them as hopeless cases instead of acting like a country with 10,800 people is a sovereign state on a par with Russia or a place that has let us say a billion people or 500 million people. We should make it very plain. You are out there in the middle of the ocean by yourself if you do not play by the rules we will cut you off. I do not think that is that hard to do.

I think what it is hard to do is get the attention of the people focused on the need to do it because everybody says if I am dealing with the Middle East why the hell should I deal with Nauru.

Chairman BACHUS. Mr. Conyngham, do you agree?

Mr. CONYNGHAM. I agree with that. I think you just have to say this is not the way we can do business. Therefore, we cannot allow people to do business with you, and we will not do it ourselves.

Chairman BACHUS. Could the three of you identify some of the countries you think are the worst actors? I am not talking about in testimony, but just in a written response and what you think this subcommittee ought to suggest the policy of this country be.

My final question is this. In your testimony, Mr. Conyngham, you pointed out the role, and I think, Mr. Blum, actually Mr. Conyngham in his written testimony and you referred to it, the role played by professionals—lawyers, accountants, private bankers—who actually are in the business of helping rich and powerful clients, including corrupt dictators or government officials conceal and profitably invest their assets.

You know, these are the people who are actually making the arrangements with Nauru or whatever, with these offshore banking centers. In your view, how widespread is that? I mean, is there a whole industry out there in the business of serving these people? What are governments or professional organizations doing to discourage these attorneys and other professionals from offering these types of services?

Mr. Blum offered the idea of a lawsuit, a civil lawsuit. What is your suggestion?

Mr. CONYNGHAM. Well, I believe I actually brought it onto the table. I think I said in my written testimony I attended the International Bar Association meeting in Cancun, Mexico, last October, and there was a session on how they should respond to issues of banking secrecy and what advice they should be giving. It appeared to me they had not even begun to understand the issue outside of

what their immediate relationship with their particular clients might be.

The National Criminal Intelligence Service gets the report of suspicious transactions, and our money laundering legislation refers to lawyers and accountants as having a responsibility under that legislation. I think 2 or 3 years ago it had 15,000 suspicious transaction reports. One hundred and seventy only came from lawyers, and that I do not believe reflects the number of situations that lawyers in the United Kingdom might have been involved in in that particular year and might have thought this does not sound or this does not look or I am being asked to do something that I am not too comfortable here, and maybe I ought to say no.

I am afraid maybe I am the worst kind of animal. I am a retired lawyer, but I do believe that the professions have to take their responsibilities in this area far, far more seriously than they have been to date. They cannot sit at conferences and talk about a professional privilege and issues of that nature without at least trying to understand why it is that there is concern as to where probably a very small minority of their brothers are behaving.

Chairman BACHUS. Mr. Blum.

Mr. BLUM. I think there is a bit of a crisis in all of the professions these days. I mean, the Enron case alone should tell you that it is not limited to dictators who want to launder money.

What we have is this fundamental problem of people who have forgotten that the purpose of being a lawyer is to teach people how to obey the law and to help them keep their transactions within the scope of the law. Somewhere in my professional career that message got lost, and an awful lot of people now believe the job of a lawyer is to help people break the law.

I have tried at various ethical meetings and discussions on ethics to raise the point that the minute you do that you cease being a lawyer, and you become a co-conspirator and that you have to go back and remember what the professional's job is supposed to be and hold that standard. When a client says but I will go down the street, you have your colleagues down the street who will say the same thing. They have to say "You cannot do it. It is illegal."

We have a real ethical crisis here. I think that leadership is needed in the bar, and public discussion of that ethical crisis is needed. Every major accounting firm has had an entity that incorporates people offshore, that sets up offshore arrangements, that helps people. Whether those skirt the law in one place or another is something that is very hard to tell.

Chairman BACHUS. Mr. Chege.

Mr. CHEGE. Mr. Chairman, you asked for some of the countries and some of the actors in this and what initiative we should have toward this.

Closer to the region I specialize in, I am very concerned with what is going on in the United Arab Emirates. Some of the evidence just in the open sources coming out of 9-11 is that it is a haven of financial activities for terrorist groups, and also I just mentioned to Congresswoman Waters some of the activities of tanzanite and illegal diamonds and that sort of activity over there and, of course, the strategic position that country is in with the Middle East, Africa, Asia, as a trading hub.

Malaysia. I do not have the full details, but again going by the press you see an awful lot of activity between agents of that government with some of the nastiest dictators in Africa—Robert Mugabe, the government of the Sudan, even Charles Taylor in Liberia. I do not know what that again is about. I think they want to corral some of the funding and use it for their own internal development.

Mr. Blum mentioned Enron and Anderson. It might have skipped the notice of some people that in this rather seemly deal some of the Enron money, an account was secreted in African countries, including Mauritius.

It now seems to me that some of the illegalities are done in places where we least expect to look—the Arab Emirates, off the East African coast, a whole lot of other places.

I think it is important, as my colleague Jack Blum said, to have an international initiative that looks into all these activities to see what legislation can be brought to bear with us here in the United States taking the lead and other countries that are concerned with this problem, especially in the OECD countries.

Chairman BACHUS. Thank you.

Finally, I would like you—— if you all have any comments you would like to reduce to writing to tell us any suggestions you have about how to move against lawyers, accountants and other professionals who are facilitating this asset seizure. Actually not asset seizure, but stealing of the assets.

Finally, I will close with this. Mr. Blum, Argentina. There have been charges of widespread corruption there. Could you give us, and, Mr. Conyngham or Mr. Chege, if you have comments on that, but we will close with that.

Mr. BLUM. There were indications that there had been widespread trading in Argentine foreign debt where people would buy the debt at 20 cents on the dollar or 30 cents on the dollar and then make some sort of arrangement inside the government to have the debt redeemed at 100 cents on the dollar either in the form of hard assets or in the form of payment, and all of that would be in exchange for a payoff of a rather substantial amount.

Some of this surfaced in the hearings of the Permanent Investigation Subcommittee, but there have been many other elements of corruption, especially under the Manem government, which have helped lead to the current collapse.

To put money into Argentina at the moment without fixing some of that, without trying to go after some of the people who perpetrated it, seems to me to threaten to be putting money in a leaky boat or putting water in a sieve. You are not going to get very far. It is not going to help you.

Mr. CONYNGHAM. Mr. Chairman, I do not have any specific comments on Argentina, but as it is the last moment perhaps I could just say this. There are things that we can see coming up on the near horizon in addition to Argentina.

What is going on in Zimbabwe and Mr. Mugabe there; at some point we will need to look almost certainly at maybe his assets. Things going on in Angola, in Equatorial Guinea and possibly even again in Iraq. In many ways, this is where to a degree some of this started.

If you remember going back to the Gulf War and Saddam Hussein at that time, there was a major asset search conducted in related to Mr. Saddam Hussein so that the Kuwaitis, when peace was restored, could also go after that country and after that gentleman for reparation because it was believed that he had in fact stolen funds that belonged to the country. Maybe his time will come again.

What I would urge on this subcommittee is that there is some urgency in putting together something along the nature of what Mr. Blum is suggesting so that when these countries have the opportunity to address this issue when they can go after the assets of these despots there is a mechanism that makes it a lot easier for them to do so than was the case for the Nigerian government who literally to a degree had to go around the world not cup in hand, but with great difficulty saying could you help us and, by the way, we have not got too much money to pay for it.

I would ask that there is urgency about it. Thank you.

Chairman BACHUS. Thank you.

Mr. Chege, any final comments?

Mr. CHEGE. My final comment has to do with the role I think that the IMF and the World Bank should play into this. I mentioned in my written testimony, Mr. Chairman, the Meltzer Report that was commissioned by the U.S. Congress which, in my view, is the best and most thorough report on the activities of those institutions and what ought to be done to reform them.

We basically have two international institutions that deal with international finances in the developing world that were thought of immediately after the Second World War. The world has changed a heck of a lot since, and we need to restructure them with the United States taking the lead so that they can address some of these issues.

Everywhere we have international finance meetings with these institutions playing a role, you have young people coming out in droves to demonstrate. You have seen the national capitol of the United States having been shut down sometimes because there are so many angry young people, not so much at these institutions and the information about what they do, but over the anger about poverty out there in the developing world and what ought to be done to address it.

I believe that it is time to revisit the functions of those institutions in addressing the other issues of poverty, but also the issue that this subcommittee is dealing with this morning, and that is the stolen and plundered loot that the dictators have secreted abroad.

Chairman BACHUS. We thank you, gentlemen, very much for your testimony.

At this time the hearing is concluded.

[Whereupon, at 12:23 p.m. the hearing was adjourned.]

A P P E N D I X

May 9, 2002

Prepared, Not Delivered
Opening Statement

Chairman Michael G. Oxley

Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit
"Recovering Dictators' Plunder"

May 9, 2002

Thank you Mr. Chairman. I know you addressed this issue last Congress, and I appreciate your continuing work.

Developing countries are too often looted and plundered by tin-pot thugs who pretend to lead them. In unstable countries where education, economics, and legal systems are weak, it can be a heavy lift to change the political system from bullets to ballots. In too many countries, rip-off artists masquerade as political leaders, violating the trust of their people, scooping up bribes, and kidnapping well-intentioned international aid.

To steal from those who lack life's most basic necessities -- food, clean drinking water, education, and housing -- is beneath contempt. The so-called leader absconds with the cash, leaving behind abject poverty, malnutrition, public health and developmental problems.

There's even a word for this kind of government -- kakistocracy. It means government by the least qualified and most unprincipled citizens. Of course in Ohio, we would just call these people con artists.

What's even worse is that this kind of looted money tends to flow through the same sewers as drug money and terrorist financing. Just like drug criminals and terrorists, these reprobates use the underground financial systems of false names, abused private banking accounts, and bank-secrecy laws. What they all have in common is a complete disregard for human life.

This Committee has taken a strong stand against money-laundering of all kinds. Chairman Bachus has mentioned our anti-money laundering bill that became a major part of the anti-terrorism USA Patriot Act last fall. We have also taken the lead in reviewing international aid in the developing world.

Our Committee and the United States should also insist that the world community take a strong stand against this kind of corruption. We should begin to talk about developing fast and effective ways to help looted countries recover their funds. After

all, if the thieves know that they will never be able to spend their ill-gotten gains, the incentive of personal gain is removed.

We should think about areas where Congress can take the lead legislatively. We will be reauthorizing some of the development banks -- including the African Development Fund -- over the next few months, and it is a reasonable idea to seek agreement with the banks that future aid packages contain language that enable swift asset-recovery programs.

So, Chairman Bachus, I commend you for convening this hearing, and for the excellent panel you have assembled. I look forward to their testimony, and to continuing the discussion on this issue at future hearings and markups this Congress.

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OPENING STATEMENT OF CHAIRMAN SPENCER BACHUS HEARING OF FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE ON RECOVERING ASSETS STOLEN BY CORRUPT FOREIGN LEADERS MAY 9, 2002

The Subcommittee meets today to hear from a distinguished panel of private sector experts on what the international community is doing – and what more can be done – to address the causes and consequences of the political corruption that is so widespread throughout the developing world. The Subcommittee's particular focus will be on efforts to recover stolen assets and other proceeds of corruption and return them to their rightful owners in countries that have been plundered.

Last Congress, Ms. Waters and I held hearings in the Domestic and International Monetary Policy Subcommittee on the transition taking place in Nigeria from a military regime plagued by rampant corruption to a functioning democracy marked by impressive economic and social reforms. Nigeria is, of course, something of a poster child for what can happen to a country when it is hijacked by corrupt public officials who enrich themselves at the expense of those they are sworn to serve. The notorious military dictator, General Sani Abacha, aided and abetted by a host of cronies and family members, systematically looted the Nigerian treasury of literally billions of dollars over the course of his brief five-year rule, leaving behind a desperately impoverished country when he died in 1998.

Efforts to identify and repatriate Abacha's ill-gotten gains have spanned the globe, following money trails to private banking departments at New York and London money center banks, as well as to more obscure locales

such as the bank secrecy havens of Luxembourg and Liechtenstein. The bulk of Abacha's stolen treasure ended up in various Swiss bank accounts.

To their credit, the Swiss authorities launched an intensive investigation of the Abacha accounts in 1999. Just last month, a landmark settlement was reached among Switzerland, Nigeria, Abacha's survivors, and four other countries where Abacha funds were deposited that will result in the return of over $1 billion to the Nigerian government. We will hear more about this settlement from our witnesses at today's hearing.

For countries already struggling with deep-seated poverty, hunger and disease, the human toll exacted when corrupt government officials divert public resources for private gain can be devastating. So long as corruption thrives in so many places around the globe, efforts to improve the living conditions of people living in poverty – whether through debt relief, foreign assistance, or capital investment – can never fully succeed.

So what can the United States and other developed countries do? First, we can require as a condition of U.S. and international financial assistance that recipient countries implement meaningful anti-corruption measures, to prevent such aid from being misappropriated or used for anything other than its intended purpose. Second, we can work with our G-7 partners and other governments to deny safe haven to funds that have been spirited out of countries by corrupt political regimes. As the Abacha case demonstrates, the global banking system can be easily exploited by those seeking to conceal or launder the proceeds of political corruption. A concerted international effort – involving close cooperation among regulators, law enforcement authorities, and financial institutions – is absolutely essential for dealing effectively with future Abachas.

In this regard, two key provisions of the USA PATRIOT Act developed in this Committee last fall will reduce the attractiveness of the U.S. as a destination point for the ill-gotten gains of corrupt foreign officials. First, the new law expands the list of foreign predicate offenses on which the U.S. government can base a money laundering prosecution to include "the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official." Second, the PATRIOT Act requires U.S. financial institutions to apply enhanced scrutiny to private bank accounts maintained by or on behalf of senior political figures and their immediate family members or close associates, to facilitate the detection and reporting of transactions that may involve the proceeds of foreign corruption.

At today's hearing, we will hear testimony from seasoned investigators and asset recovery specialists who are uniquely qualified to provide the Subcommittee with a report from the front lines of the battle against global corruption. I want to extend a particular welcome to Jack Blum, whom many of us have worked with over the years and who is always a source of wise counsel on issues relating to international financial crime and money laundering.

NEWS FROM:

U.S. Rep. Ed Royce

California's 39th district representative, 2202 Rayburn Building, Washington, D.C. http://www.house.gov/royce

For Immediate Release
May 9, 2002

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Statement During the Subcommittee on Financial Institutions and Consumer Credit Hearing on "Recovering Dictator's Plunder"

WASHINGTON, D.C. -- The following is the statement from U.S. Rep. Ed Royce (R-CA-39) at today's Subcommittee on Financial Institutions and Consumer Credit hearing into "Recovering Dictator's Plunder." In addition to the House Financial Services Committee, Royce serves on the International Relations Committee, where he chairs the Subcommittee on Africa.

"I want to commend Chairman [Spencer] Bachus for calling this important hearing.

"I serve as chairman of the Africa Subcommittee. The world's poorest continent has probably suffered more than any other from plundering by corrupt elites. The recent recovery of former Nigerian dictator Sani Abacha's ill-gotten gains is encouraging. The average Nigerian today is no better off than 25 years ago, despite $350 billion worth of oil that has been pumped since then. I guess that's understandable when the Abacha 'estate,' if we can call it that, alone was worth several billion dollars. Well it's worth less today. While this recovery was far from perfect, it was a step in the right direction - one that sends an important message to Nigerian leaders that they can be corrupt and rich or they can be remembered in their country's history for their contributions to the betterment of Nigerians.

"While it's important to go after the plunder of former dictators, those chased from power after ruining their own countries, we also need to be focused on the assets of current despots.

"One country deserving of special attention is Zimbabwe. This once relatively prosperous country has imploded, as President Robert Mugabe's government has resorted to every means of intimidation to stay in power. With Mugabe having ruined his country's agricultural economy, Zimbabwe is now nearing famine, and we've received reports of the government denying international food relief to the *children* of political opponents. Last year, President Bush signed into law legislation in which Congress encourages the Administration to seize the assets of Zimbabwean government officials responsible for this chaos. The Treasury Department needs to be actively pursuing this option. Many in Congress are waiting. When the day of reckoning comes in Zimbabwe, the ill-gotten gains of Mugabe's cronies could be put to good use.

"One of the witnesses today will mention the plundering of Liberian President Charles Taylor, reporting that he has multimillion dollar accounts abroad. Charles Taylor is a war criminal. Much of his plunder has come through his sponsoring what hopefully now is a defunct rebel movement in neighboring Sierra Leone whose signature was cutting off the limbs of men, women, and children. The United Nations this week renewed sanctions on Taylor's government. I wish it had done more, including a timber ban. Taylor's assets should also be put in play, which we can do.

"Again, Mr. Chairman, I want to thank you for your commitment to the developing world, especially Africa. I look forward to this hearing, and working with you on this important issue."

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TESTIMONY ON THE SOCIAL AND POLITICAL COSTS OF THEFT OF PUBLIC FUNDS BY AFRICAN DICTATORS

US House of Representatives Committee on Financial Services
May 9, 2002

By Michael Chege
University of Florida, Gainesville

Bad national governance--and dictatorship is the worst form of it--is now the acknowledged tap root of mass poverty and political instability in the developing world. Dictators achieve that infamy by exposing those they rule to a double jeopardy. By denying those they tyrannize their inalienable rights, such as free speech, access to a free press, freedom of worship and freedom of association, they confine the public's mind to a stifling inward-looking provincialism that drives out the vigorous debate their complex problems cry out for. By denying those they tyrannize their rights, they also banish them from freedom to explore on the basis of free enterprise, novel and legitimate ways toward individual prosperity--the most convenient path out of mass poverty known to us so far . That double jeopardy is compounded when despots steal funds from their own people-- either by raiding the national treasury or by demanding commissions and bribes in large commercial transactions--secretly banking the ill-gotten gains abroad.

By stealing from poor economies, third world dictators not only deny their countries vital savings and investments, they also perpetuate a culture of perverse policymaking that leads to more poverty and more political discontent. That in turn calls for more repression, more payoffs for political turncoats, more torture chambers, and yet more multimillion rip-offs by the management of the dictatorships to finance all that. Dictatorial theft, bad policies and poverty reinforce each other in a vicious cycle.

Mr. Chairman, the developing world has some of the fastest growing populations in human history--2.6percent annually in Africa south of the Sahara between 1990 and 2000; 2.2percent in North Africa and the Middle East over the same period; and 2percent in South Asia. A fast growing population is a young population. In many of these regions, more than half the population is under 25. As the priority of priorities this calls for expanding services in child immunization, better and more health services, more and better public education, more schools and colleges. And more jobs too, preferably city jobs. For in the age of the global electronic information young people have access to first world television, advertising and hip hop. And they desire some of it.

When dictatorships secrete stolen funds into secret offshore accounts, fail to provide public health services, or public education and jobs to a young population with such high expectation, they risk setting off an explosive chain reaction ruining the societies they tyrannize and spreading to far of countries including the United States.

Sierra Leone in West Africa suffered a horrible civil war between 1991 and early 2002, arising mainly from corrupt despotic rule--by Presidents Siaka Stevens (1968-85) and Joseph Momoh(1985-1992). Lack of hope and economic failure there sparked a rebel movement (Revolutionary United Front) composed of footloose youths animated by despair, a foolish fondness of Rambo movies, and avant garde Western popular culture. Their trade mark was senseless amputation and they were especially brutal to civilians. Supported by neighboring Liberia's dictator Charles Taylor, these Sierra Leone rebels sustained themselves by commissioning the mining of alluvial diamonds in eastern Sierra Leone that found their way, according to a recent UN report, to Charles Taylor--a holder of multimillion dollar overseas secret accounts. Taylor is now lording it over a country whose capital has no portable water, electricity, or sewerage system. Taylor's principal intermediary in the diamond and banking business was a Kenyan illegal arms dealer, Sanjivan Ruprah(now under arrest in Belgium for traveling on a false passport) who was business associate of Victor Bout---the notorious Russian arms dealer who supplied Al Qaeda, Abu Sayaf in the Philippines. In all this Sierra Leonian diamonds facilitated money laundering. According to *The Washington Post* and *The Los Angeles Times*, Bout ran the largest illegal arms dealership in the world and African diamonds from conflict areas were one of his many specialties.

The late and unmourned President Mobutu of Zaire of course holds the record for financial plunder and national ruin. With an estimated $4billion dollars in stolen fund to his credit when he went to meet his maker in 1997, he left the country poorer than he found it, with a ruined infrastructure and no formal economy to speak of. The legacy of his corrupt and irresponsible rule is a succession of weak governments and a civil war that has sucked in seven African states.

Nigeria is the seventh largest oil producer in the world. A close second to Mobutu in the African national hall of shame for kleptocracy must be the Nigerian military dictator Sani Abacha, whose five year (1993-98) rule left 70percent of Nigeria's 120million people living on less than one dollar per day. Is it any wonder that despite elections in 2000, there is unrest in Nigeria that could sunder its fragile democracy? Is it any wonder that young and desperate

Nigerians are suscesptible to religious extremism and ethnic demagoguery that has led to massacres?

In Kenya, the Daniel arap Moi dictatorship (1978 to the present) must be given credit for systematic destruction of what used to be Africa's economic showcase from the 1960s through the 1970s. Through craven policies and unprecedented levels of theft of public funds, public land, forests, recreational parks, school playgrounds, and buildings. The authoritative British newsletter *Africa Confidential,* put Moi's external bank holdings at US$3billion two years ago. He denied it publicly but insisted that he could not vouch for his siblings who, together with Moi's supreme confidante Nicholas Biwott have been often linked to major corrupt deals in Kenya. They have in the process recruited loyal sycophants into the process, primarily but not exclusively from Moi's ethnic homeland. In the so-called Goldenberg scandal the Moi regime bolted with an estimated $1billion from its own Central Bank (12percent of the nation's GDP at the time) setting off a spiral of inflation, economic stagnation, unemployment, and rampant crime, a ruined agricultural sector, and decaying public services. Once a tourist haven, Nairobi the capital is now ranked by the UN among the most unsafe cities in the world. Kenya is now a strong candidate for the next African failed state.

I have concentrated on African states because that region now contains the dominant number of the world's poor who are getting poorer. The poor of India and China though larger in number may be turning the corner as growth takes root there. Africa deserves least the treatment they have received from the Mobutu's, the Abacha's, the arap Mois, and the Charles Taylors. But the phenomenon is not confined to Africa. The family dictatorships that run governments in the Middle East, the Somoza family in Nicaragua, Iraq's Sadam Hussein, the Duvalier dynasty in Haiti, the Marcos family in the Philippines, the Suharto family in Indonesia, the Russian "oligarchs" in the 1990s--all of these have been keen players in this tragedy of our times--robbing the country and banking the loot abroad, even as social misery multiplies.

What then can be done, by your committee and the US House of Representative?

First, insist on more democratic practice, transparency and accountability in the way these countries are governed. Some may say that this is tall order. It is not. The first line of defense against kleptocratic dictatorships that hide stolen funds abroad must be domestic accountability to the ruled. Democracy is good for your pocket and for mine, and for that of the poor in Africa and other poor

regions. An effective legislature, a free press, an independent judiciary--that is the most effective firewall against financial illegalities that breed poverty in the developing world. A free people will fight for its rights--for its tax money, and for open bidding in public contracts. We know that even in rich democratic societies that has not proved always easy, but to corrupt Winston Churchill---it is the best in a very bad lot of alternatives.

There are committed democrats even in the most desolate of cases, many of whom---as we see in Burma today in the case of Ann Suu Kyi, and in South Africa in the past---are ready to pay the ultimate price. Like charity, good governance begins at home. Let's give it a leg up wherever it beckons.

Second, we must look at the international dimensions of the problem. The cold war era with its unquestioned support for friendly dictatorships by the US is over. The World Bank and the IMF who have unwittingly assumed the role of funding economic development in the developing world may have succeeded in some aspects of that task--for instance the insistence on the primacy of markets as the principal too for resource allocation. As far as governance reforms--of the kind we are talking about---are concerned, however, they have been a spectacular failure. Both organizations knew perfectly well that the Mobutu regime was turning aid into the dictator's villas in the French Riviera, and chateaux in Switzerland. But the aid dollars kept flowing. Despite the window-dressing rhetoric from these institutions about the importance of "local ownership" of development programs, "capacity-building", and "participation" in poverty alleviation programs, it is still business as usual behind the scenes. Their principal goal still remains to maximize the loan portfolio to the developing countries, in the guise of fighting poverty.

That is why despite the outcry from the Kenyan opposition, Christian churches, and the press, the World Bank has continued cutting deals behind the scene with the incompetent and venal Moi government in Kenya--even to the extent of seconding Kenyan World Bank employees to Moi's public service. The IMF and World Bank's previous demand that those responsible for the massive heist under Goldenberg be brought to justice has been quietly put to rest as the regime is persuaded to adopt face-saving anti-corruption legislation so that aid can resume.

I would urge the honorable members of this committee to please look at the structural reforms suggested about the Bretton Woods institutions by the Allan Meltzer report of the year 2000 that was commissioned by the US Congress. It constitutes a good start for rethinking the multilateral development

system as constituted after the Second World War. The World has changed a lot since. One of the most obvious dimensions of that change is global criminal and terrorist based financial transactions. Considering the number of poor people they hurt, thefts of public funds by dictators must rank among the most callous and heartless acts of our times.

Mr. Chairman, I grew up in Kenya and had to flee the dictatorship of President Daniel arap Moi in 1989. I have traveled in and studied African developments in over two decades of my professional career. I know this situation first hand from travel and from consistent study of a large number of developing countries in Africa, Asia and Latin America. I am sure I speak for many I have met that are voiceless yet bear the pain. I implore this committee to strike a blow for justice, for the poor children, for the impoverished youths and ordinary citizens who have been victimized by merciless robbery of public funds by those entrusted with the role of guarding them.

Testimony of John Conyngham Esq
Global Director of Investigations, Control Risks Group Limited
Before
the Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit,
US House of Representatives
9 May 2002
Recovering Dictator's Plunder

Mr Chairman

My name is John Conyngham. I am the Global Director of Investigations for the Control Risks Group Limited, a global business risk and corporate investigation consultancy headquartered in London, England. As such, I manage our 150 strong investigative team operating out of 12 of our 18 worldwide offices. I am honored to appear today before the Financial Institutions and Consumer Credit Subcommittee of the Committee on Financial Services and thank the Subcommittee for its most kind invitation.

The discussion today about what has become known as *grand corruption* and, in particular, the recovery of monies illegally obtained by high ranking government ministers and officials in worldwide jurisdictions through the abuse of public position for private gain. As this Subcommittee is aware, *grand corruption* typically consists of the payments of large bribes – often in millions of dollars – to secure commercial contracts or other business advantage. In its most extreme form *grand corruption* can amount to *state capture* where corrupt interests control the state itself and manipulate the machinery of government to serve their private interests. Former President Mobutu's kleptocracy in Zaire, where his 'salary' was reported at one point as equalling 17% of the national budget and his 'personal allowance' exceeded the combined expenditure on education, health and social services and Former President Slobodan Milosevic's actions in Serbia are widely perceived to be classic examples of this phenomenon. Indeed, as far back as 1995 Mr Dinkic, then Governor of the Central Bank in Yugoslavia, had the courage to state that Yugoslavia:

'was a nation where paranormal economic phenomena are an everyday phenomena'.

Mobutu and Milosevic, in public perception, joined forerunners such as the late Ferdinand Marcos of the Philippines, 'Papa Doc' Duvalier of Haiti and Former President Suharto of Indonesia to name but a few.

Since this phenomenon undoubtedly exists, what has the developed world done to identify and return such plunder to its rightful ownership? Or is such a thought simply a pipe dream?

In appearing before this distinguished committee today I must immediately state that I do so as an investigator. Within the worldwide team that I have the privilege to lead,

our number includes lawyers but we are not a law firm, we include accountants but we are not an accountancy firm, we include former police officers but we are not law enforcement. Rather, as commercial investigators, we see our function to be that of finders of facts, gatherers of intelligence and evaluators of evidence.

In starting from that premise today I would not dare to seek to answer the questions that I have posed. What I would feel comfortable to provide would be a brief outline of our approach to asset identification, a short mention of successes to-date, an indication as to the nature of difficulties typically met along the trail and a progression onto a possible route map forward that includes practical issues, generic political issues and perceived legal difficulties. In conclusion, I shall have the temerity to suggest the need for a public and private sector *partnership* in this arena that could assist in the overall development of a coherent methodology that would more readily facilitate the recovery of the proceeds of *grand corruption.*

The Investigator's Perspective

The investigator's aim in large-scale asset tracing exercises is to achieve asset identification, proof of ownership and clear linkage to originating criminal acts. To ensure that such aim maintains focus in scope and direction investigators generally work in *partnership* with law firms and, as required, accountancy firms. Our methodology is one whereby known information is *C*ollated, *A*dditional information accessed, intelligence *G*athered and *E*vidence evaluated.

Under this *CAGE* approach, known information may range from the relative simplicity of known addresses, travel patterns and favored jurisdictions to corporate structures often utilised and personal interests. A simple underlying presumption is made that those who divert state funds will wish to utilise such funds for their own or their family's benefit. As such, there must be linkage, however camouflaged, between the individual and the asset. All facts will be cross-referenced and charted in conjunction with the results of worldwide database and public record research and the scouring of corporate filings. This large base of initial information will then be used to suggest further lines of enquiry.

A second presumption will also be made; namely that third parties will be utilised in the concealment process. When the balloon goes up and it is known that the hunt is on, these third parties will often become susceptible to approach. Alongside targeting of such individuals, the jurisdictions in which the search should be continued will be assessed. This latter point is important; a Pyrrhic victory is achieved if an asset is identified in a jurisdiction that does not allow for meaningful recovery action through its legal system.

Concurrent to this research and interviewing process, the investigator will be seeking to develop relevant intelligence sources that could be expected to add to the knowledge base and ensure the correct targeting of resources, investigative or legal. Finally, at appropriate points on the investigative route these elements will be tested for evidential merit.

Whilst the methodology is clear, the hurdles along the route are significant. The investigator will meet the *secrecy* of people, of companies, financial institutions and

of jurisdictions together with the *complexity* of offshore corporate structures, of politics and of laws. How does the international investigator address such issues? The brief answer is 'with great difficulty'. These issues present great challenges and, on a regular basis, great frustrations.

In a world that even before 11 September 2001 was calling for higher standards of corporate governance and transparency, that was insisting on far greater uniformity in anti-corruption measures and the belated mirroring of the US Foreign Corrupt Practices Act in Europe through the initiatives of the Organisation for Economic Co-operation and Development (OECD) and the Organisation of American States (OAS) is it a satisfactory conclusion that an inability to pierce corporate veils, a party's refusal on secrecy grounds to identify the beneficial ownership of an offshore account or a failure to unearth the true ownership of an International Business Corporation can mean that funds that would otherwise have been available for return to an emerging country remain in the possession of a deposed dictator or his heirs? As was pointed out in a 1998 United Nations Office for Drug Control and Crime Prevention Report:

'The offshore financial world is appropriately described as a "Bermuda Triangle" for investigations of money-laundering, complex financial fraud and tax evasion. Money trails disappear, connections are obscured and investigations encounter so many obstacles that they are often abandoned'.

But, perhaps, there is some light on the horizon? The tragic events of 9/11 have led to the advent of The Patriot Act and emerging regulations in the USA that are being partially followed in the United Kingdom and other jurisdictions and we may be witnessing a redressing of the balance that still firmly recognises the right to privacy of the individual but gives significant weight to the needs of justice. With greater openness and the availability of crucial information, crime could be made to pay rather than seen, itself, to pay. As investigators we would welcome such an approach and States that have suffered the indignity of *grand corruption* would benefit.

In the light of some of these difficulties luck will also play its role in the investigative scenario. In one matter, our work took us to the doorway of corporate nominees and that could have been the end of a trail as far as identification of beneficial ownership was concerned. In fact, on that particular day in that particular jurisdiction the nominees, themselves disturbed as to the nature of certain recent events, decided to show documentation that declared the beneficial ownership of the assets under enquiry. It was a matter of good initial research, skilled intelligence as to possible states of mind, timing and persistence.

In another matter, my company worked in partnership in the Far East with some 75 accountants from a Big 5 accountancy firm and 30 lawyers from an international law firm. Many billions of dollars were suspected of having been improperly removed by a senior official from a government fund. At the outset a strategy was set that recognised that prosecution action was unlikely, on political grounds, and that settlement was the preferred result. This lack of intent to prosecute in of itself potentially cut off certain legal recovery avenues. In November 2000, Lorna Harris, the then Head of the Home Office Judicial Cooperation Unit in the United Kingdom had said, whilst providing testimony to the House of Commons International

Development Committee that was enquiring into the United Kingdom's role in attacking corruption in developing countries:

'most applications made by overseas governments for the confiscation of assets were turned down because they failed to meet the conditions for the United Kingdom to act, in particular by providing evidence of a criminal prosecution in the country making the request'.

Within these parameters purchases by this fund over a 10 year period were examined; overpayment for assets was determined to have been the norm and assets 'owned' by a defined grouping of associates were suspected as being the proceeds of the gross misuse of funds. This network of associates was identified, publicly declared properties were analysed and an intelligence operation was designed to provide forewarning of any attempts to liquidate goods. One simple piece of intelligence led to the seizing of artwork worth in excess of US$10 million.

The *partnership* of the three components to the overall recovery team – the investigators, the lawyers and the accountants - led to the easy transfer of accumulated knowledge including a wide base of experience of the applicable laws in the multiple jurisdictions that the asset trail encompassed. It also allowed for a co-ordinated asset recovery *strategy*.

If this private *partnership* could succeed - and a settlement running to many billions of dollars was achieved – what could a real and wide public *partnership*, a combination of governments, business in the form of professional advisors and civil society achieve on the multi-jurisdictional public platform that is the stage for the war against *grand corruption*? Consideration of this question raises generic political issues, legal difficulties and other practical issues.

Political issues

Whilst broad generalisations are often to be avoided, it is our experience that the nature of acts that found the basis for allegations of grand corruption are usually uncomplicated in nature. In the recent *Abacha* matter investigators were faced, in the main, with what any prosecutor would term a simple over-invoicing scam. Party A, an arm of the Nigerian government, would contract with Party B for the supply of goods or services. Goods would be delivered by Party B but their value would be at a great undervalue to the sum set out on the accompanying invoice. The full amount of the invoice would be remitted to Party B which would, in turn, remit the excess to Party C, an entity under the control of friends/associates of the late and Former President *Abacha.*

If the dishonest acts were clear, proof of complicity by the main actor was more opaque and formal identification of ownership of the proceeds of such dishonesty, including beneficial ownership of bank accounts, was far less transparent. The real assistance of governments, regulators and financial institutions was required if success was to be achieved.

Such assistance was, in fact, slow in coming. In the United Kingdom, in their early stages, approaches from the Nigerian government fell victim to the criminal

prosecution prerequisite (dual criminality) not least because the principal actor had died but also because of the climate of fear and the tribal associations and influences that dominated. Admissible evidence that could be produced in a manner acceptable to our courts was absent. At governmental levels in other relevant jurisdictions there remained concerns as to whether the new government of President Olusegun Obasanjo was taking real steps to confront corruption and whether previous recipients of proceeds of *grand corruption* were being tackled.

In other *grand corruption* cases, new governments have been unable to prioritise the need to meet international standards for mutual legal assistance or have continued to fall foul of human rights concerns. Such failures can lead to efforts to recoup the proceeds of large-scale corruption failing to secure real momentum and inter-governmental co-operation.

Legal Issues

The sub-committee has requested consideration of the differences in applicable laws between jurisdictions as they apply to the recovery of assets. Proper consideration of such matters would require the knowledge of an international jurist and I am not such an animal. The international laws are complex and there are a multiplicity of treaties and agreements, the details of which must fall outside my scope today. However, some big picture issues can be relatively easily headlined:

The primary issue is the significant substantive and procedural differences between civil law and common law jurisdictions. Legal asymmetries can cause difficulties even between the same legal tradition especially with respect to definitions of offences and corporate liability; when transposed to different systems of law, the gulf can become much greater. Some countries, Germany, for example, allow for the import of foreign law whilst others, including Switzerland, send delegations into foreign countries in which, if allowed in the host country, they can apply their own laws.

The concept of civil forfeiture in criminal matters, available in civil law jurisdictions, is alien to a vast majority of national legal systems but through the lesser standard of proof that civil proceedings carry with them offers real advantages when proof of ownership of entities or accounts that are held behind secrecy provisions is required. In addition, it side-steps the dual criminality provisions required under international criminal procedures.

In seeking to pierce a corporate veil or define beneficial ownership of an account held offshore – so badly needed to allow for access to records of transactions or proof of the further movement of funds – the investigator will have pursued the field interviews with third parties, analysed the usage of, say, a Caribbean address and will be seeking to collect, at the lowest, sufficient circumstantial evidence that will convince the advising legal team that, at least as far as the civil standard of proof, the balance of probabilities test, is concerned, the evidence is such as to found the clear inference that the beneficial ownership of an account or entity is Mr X or Miss Y. And yet it will only be later this year in the United Kingdom, through the passage of the Proceeds of Crime Act in our legislature, that a civil forfeiture mechanism for recovering the proceeds of crime will become available in our courts. Part IX of the

Act also contains specific provisions that will enable the United Kingdom to carry out requests on behalf of overseas governments for asset freezing and the enforcement of confiscation orders. The need for dual criminality will be replaced by a mechanism that allows for Orders in Council to be made by the Sovereign at a speed that will far outstrip the implementation of treaty requirements. While the United Kingdom may be slowly catching up, other jurisdictions remain behind.

Secondly, the ability to take steps to stop the dissipation of assets once identified is crucial in large-scale asset investigations. The development of case law in the United States and the United Kingdom has perhaps taken different routes to achieve the same end. In the USA it would appear that the development of 'discovery' procedures leading to the right to demand the production of evidence of ownership has taken precedence over what, in the United Kingdom, over the past 25 years, has been the development of effective interim remedies.

These interim remedies include orders for the freezing of assets on either a domestic or world-wide basis, the tracing of assets into the hands of third parties and the freezing thereof pending judgement, the seizure of documents in the hands of prospective defendants alleged to be relevant to proving anticipated claims, orders for the disclosure of information and 'gagging' orders on third parties preventing them from disclosing to defendants or prospective defendants the fact that they have been ordered to disclose information. These are powerful judicial orders that can bring parties to the negotiating table far earlier than might otherwise be the case. Freezing Orders do not have direct counterparts under US law. It may thus be necessary in a matter that involved identified assets in both the United Kingdom and the United States to obtain a Freezing Order in London that could also be implemented in New York.

There are then Treaty agreements, Conventions and procedures which, whilst clearly of great assistance, could also be thought to occasionally give with one hand whilst taking with the other. Mutual Legal Assistance Treaties (MLATS) and Letters Rogatory provide clear avenues for the cross-jurisdictional exchange of evidence. However, first and foremost, the requisite arrangements must be actually in existence at the relevant time of need and, secondly, evidence furnished under these instruments cannot be shared with third countries. In the United States evidence provided before Grand Juries is confidential and can only be shared elsewhere under tight requirements and restrictions.

The question of evidence brings in the status of witnesses and their compellability as witnesses in both their home jurisdictions and overseas. Different rules apply as to their availability with a lowest common denominator of cost and who will pay. A related issue is the reluctance of key witnesses in *grand corruption* cases to appear at all unless under the protection of an immunity from prosecution. This, in turn, raises the differing forms of immunity that exist in both common law and civil law jurisdictions. In short, the production of oral evidence in itself produces difficulties and cross-jurisdictional differences.

Finally, by way of headline issues, it is worth noting that many corrupt leaders will have so dominated and shaped the legislative and executive functions of their former states for such periods as to have allowed for protections from future legal action

against them to have been built in behind issues of State sovereignty, enacted laws and immunity doctrines.

An action that is, perhaps, demonstrative of this theme is the fact that the Milosevic government apparently classified all gold production as a military secret. This is a convenient tool if huge corrupt payments are being received in relation to such a commodity by the highest government officials. Succeeding governments may seek to make changes which carry with them retrospective effect but the enforceability of retrospective laws in the international arena will be fraught with difficulties.

If these are but a small sampler of legal issues, what steps could be taken to overall to aid the recovery of Dictator's plunder?

Practical steps

a) Definitional issues

There is a need for clarity as to the nature of offences that adequately capture the nature of the criminality that is encompassed within the concept of *grand corruption.* If an all-embracing charge of, say, patrimonicide is deemed unworkable then the practices that comprise its essence must be agreed; descriptions of particular acts or economic behaviours may be preferable to widely spread definitions of corruption.

b) Preventative issues

Due Diligence

In May 2001, the United Kingdom's Financial Services Authority ('FSA') announced that it had discovered some 42 accounts linked to Abacha family members in 23 banks. Turnover in such accounts was estimated to have amounted to approximately US$ 1.3 billion between 1996 and 2000. The FSA went on to find that of the 23 banks, 15 had 'significant control weaknesses' in respect of its 'know your customer' procedures and 7 were given strict deadlines for the imposition of additional controls. Significantly, the FSA did not then and has not since, actually publicly named the relevant financial institutions, a surprising stance for a regulator that might be thought to have deterrence in mind. Again, Lorna Harris, the then Head of the United Kingdom's Home Office Judicial Cooperation Unit, stated in November 2000:

'the [UK] government had done little to stop money-launderers using British national Institutions to conceal the proceeds of corruption'.

The United Kingdom and its financial institutions, I venture to suggest, was scarcely alone in such failure. This raises the question as to whether even now the 'enhanced due diligence' requirements established in the Patriot Act are adequate in the circumstances of the most senior government officials. There is a real need to ensure that the financial bona fides, business and familial relationships and known sources of income of senior government officials are adequately disclosed to financial institutions on entering high office. The concept of 'Know Your Customer' programs based on the perceived risks associated with various types of customers and the types of transactions expected of customers is not new.

Interestingly, as the committee will recall, the United States has again stolen a lead in this area through the issuance by the US Treasury Department in January 2001 of its *'Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption'*. Switzerland has also issued guidance on relationships with Foreign Potentates in the last year but, I am sorry to report, the United Kingdom appears to be dragging its feet. Oliver Page, Director, Complex Groups, FSA intimated, in January 2001, that the FSA would consider whether specific guidance in relation to foreign potentates was required. I do not believe that it has arrived.

Strongly enhanced due diligence requirements, on a worldwide basis, relative to Foreign Potentates would be a serious weapon in the fight against *grand corruption,* creating, as is the case with the US Patriot Act, longer and more detailed paper trails which are the lifeblood of the investigative process. A distinctive bank liability for failures in due diligence that lead to the facilitation of corrupt payments and the harbouring of corrupt funds would provide both an additional line of defence and a 'deep pocket' in the event of failure. The Subcommittee will recall that in October 2000, 11 of the world's leading banks put together a document that became known as the Wolfsberg Principles in which they pledged:

'to endeavour to accept only those clients whose source of wealth and funds can be reasonably established to be legitimate'.

Two years later, as perhaps an overly cynical investigator, I wonder whether such words have been put into active practice in every jurisdiction in which those participating banks offer their services.

Banking Secrecy

Following on from this concept, whilst the diminution of an individual or corporation's right to privacy is a matter that rightly attracts close scrutiny, should provisions be considered that would enable banking secrecy to be deemed waived in financial matters that touch, or are prima facie believed to touch, Heads of States and their senior officials? In carefully defined circumstances this would obviate the need for recourse to MLATS or other conventions.

For this to occur, I suggest, there would need to be a significant sea change in the thinking of private banking, a business that we are told manages some US$16 trillion in assets on a world-wide basis. As in many areas of change management, there would need to be buy-in from the very top of such organisations that led to acceptance of a cultural change whereby issues of competition and client-led demands for privacy took second place to the manner and type of business that an institution is prepared to conduct.

A further step along this route could be the reversal of the burden of proof in relation to the assets of a Head of State. At the start of a period of tenure a Head of State could tender a net worth statement. Thereafter, the apparent existence of personal assets well in excess of such statements could lead, in criminal contexts, to the raising of a presumption that such goods assets were the fruits of corrupt acts unless the contrary were proved on a balance of probabilities.

The thought is not new, it has been enacted in jurisdictions such as Hong Kong in the past but if its target 'audience' were wide it would be seen as anti-democratic and draconian. The role of a Head of State, however, is so fundamental a position of trust that encroachment on the ordinary rights of the citizen could, perhaps, be contemplated. The Head of State holds the assets of the country in the widest sense 'in trust' for its citizenry.

Corporate Secrecy

As Investigators we are often charged with the task of ensuring that a company's assets, both physical and intellectual, are secure. As such, we readily recognise the rights of companies to hold those assets away from competitors and in a tax efficient manner.

What is less acceptable to us as investigators is the concept that obfuscation of lawful ownership should be an end in itself that will be forever acceptable. In a post 9/11, post Enron world there must be, I suggest, less readiness to accept the need for corporate anonymity. In addition, the professional advisers that assist in the establishment of complex structures must, I also suggest, be made to feel the weight of responsibility for the legitimacy of their actions. In 2000, some 18,000 suspicious transactions were reported to the United Kingdom's National Criminal Intelligence Service. Of such number only 170 were lodged by law firms. At a meeting of the International Bar Association in Mexico in October 2001 leading law firms debated their responsibilities in this area and, in effect, voted for no change. As with the private banking sector, cultural change is required; the comment made recently by Elise Bean, deputy legal Counsel to the Senate's Permanent Subcommittee on Investigations in relation to private banking should be extended, in my opinion, to the professional advisers:

'the kind of secrecy that some people want is way beyond what is legitimate and way beyond what any [private bank] should be providing'.

The Way Forward

On 23 April 2002 the world's press announced what appeared to be a stunning success in the *Abacha* matter. A settlement had apparently been reached whereby the *Abacha* family agreed to return US$1 billion to the Nigerian government . Of such sum, US$535 million will be released from Swiss banks, US$200 million from banks in Jersey, and US$300 million from banks in Luxembourg and Liechtenstein. In return for such action all overseas legal actions against family members would be halted. However, no comment was made as to whether there would be any further search for the remaining US$3 billion that would remain outstanding.
This settlement was the work of a Swiss law firm working on a contingency fee basis. The law firm must be congratulated and the people of Nigeria will benefit in due course from this substantial inflow of state funds.

The question, however, remains as to whether even greater success could have been achieved if there had been, from day 1 of the world-wide asset recovery exercise, a public *partnership* of governments, of specialist private sector professionals and the

garnered will of a global anti-corruption fight that carried with it full understanding of the relevant legal weapons that could be used on sight in a coherent world-wide asset recovery strategy? If such a *partnership* had a formalised setting from which to operate it could ensure:

- that an overall strategy for the world-wide asset search was determined and agreed to at the outset of the process;
- that the complexity of issues, some of which I have touched on in this testimony, could be addressed at the very beginning of that process. This would ensure that the victim state had immediate access to 'state of the art' knowledge of laws, of treaties and of procedures;
- that efforts were clearly focussed in litigation-friendly jurisdictions;
- that breaches of anti-money laundering laws and regulations and anti-corruption measures were publicised in relevant jurisdictions and co-ordinated pressure brought to bear on jurisdictions that were failing to match the new standards of governance measures;
- that the pressures that an incoming administration faces in a formerly corrupt state could be alleviated by the unequivocal and practical support of this international body.

The time, I submit, is right for this to happen. On the near horizon do we not have the possibility of world-wide concern as to the personal financial interests of the highest members of the governments of Iraq, Zimbabwe, Angola, Equatorial Guinea to name but some? The United States, perhaps leading the way as it did in 1976 with the Foreign Corrupt Practices Act, has the opportunity to build on the work that has been commenced with the Patriot Act of 2001 with a view to ensuring that the citizens of those emerging and developed countries that have suffered the tyrannies of despots have a far better chance to see the return of monies owing to them. With these monies they can build a far better future.

Testimony of Jack A. Blum, Esq.
Before
the Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit
U.S. House of Representatives
May 9, 2002
Recovering Dictators' Plunder

My Name is Jack Blum. I am a partner in the Washington D.C. law firm of Lobel, Novins and Lamont. For the past year I have served as the chair of a United Nations experts group on asset recovery. I have been working on the issue for the past several years as part of my concern with the global problem of corruption. My statement today is my own and does not represent the views of any organization I have worked with or consulted for.

Every discussion of government corruption begins with a denunciation of corruption and an agreement that it is evil. Of course we agree that corruption is bad, but it is far more than a development issue or a barrier to foreign investment.

Corruption is directly linked to the most important issues on the America's international agenda – peace in the Middle East, terrorism, and the collapse of the Argentine economy. We must address the corruption component of each of these issues if there is to be a solution.

For years Arabs and Israelis alike have known that the government of the Palestinian Authority is riddled with corruption. It's finances are opaque. They not subject to political oversight. The personal finances of Palestinian Authority officials are equally opaque. Millions of dollars of assistance to the Authority from Arab governments have disappeared; neither the donors or the Palestinian people have much to show for their contributions. Continuing violence gives the government a perfect excuse for lack of transparency and accountability. It gives the leadership an excuse to solicit funds which will not be accounted for. War and violence cover corruption. Peace would make it awkward and difficult to hide. The protection of corruption has become a reason for not making peace.

The countries that have been the breeding grounds for terrorism have a common denominator – failed and corrupt governments. These countries do not provide opportunities for young people who are entering the job market. Instead of offering needed services, governments in much of the Islamic world have become a vehicle for the theft of the national wealth. To a greater or lesser degree, these countries lack schools, health care, clean water, job opportunities, a working legal system, and democratic government. The only acceptable form of political protest is anger at America or rage over the Arab/Israeli conflict.

To control terrorism the international community will have to find a way to control corruption. It will have to get political leaders to understand that being head of state means taking responsibility for a country's problems – that it is not just an opportunity to loot a country's treasury. It will have to insure that stolen money cannot find a safe haven in the banking system and the financial markets of the developed world.

As the committee knows, Argentina is a the final stages of economic collapse. Economic gurus from the World Bank and the IMF have offered prescriptions for fixing the Argentine economy which include further austerity, additional restructuring and foreign management of the economy as a condition of further lending. This line of thinking can be summarized as "punish the victims." I believe that no solution will work until the corruption element of the Argentine collapse is addressed. Successive governments have drained the country of its wealth. Payoff money, funds from the manipulation of the value of Argentina's foreign debt, and tax evasion money have all played a role. Money that has been taken should be recovered. But, for an economic fix to work, a repeat performance must be prevented.

In short the corruption issue is priority business for American foreign policy.

The Foreign Corrupt Practices Act and the Anti-Corruption Treaties

The United States was the first country to make it a crime for an American citizen to bribe a foreign official. The original Foreign Corrupt Practices Act grew out of the first Lockheed Aircraft bribery scandal. Congress made it a crime for Americans to bribe foreign officials. I participated in the 1976 U.N. effort to draft an international convention on the corruption issue. The effort foundered on the disagreements among the Cold War adversaries and the regional blocks. It was long referred to as the disaster of 1976.

For a long time, other countries refused to follow the U.S. lead. But, during the 1990's a series of regional treaties – one covering the OAS member states, another covering the OECD countries – on the issue of corruption outlawed the use of bribes to get contracts and to influence government decision making. These treaties, coupled with advances in the bilateral agreements on mutual legal assistance have become the major tools for addressing the problem.

Preparations are now under way for negotiation of a global anti-corruption treaty. The treaty will cover the countries which are not party to the regional agreements and will create global standards on the issue of bribery. Negotiations will open this summer. These negotiations offer an opportunity to remedy existing barriers to recovery and to create of an international mechanism for asset recovery.

Our representatives at these negotiations should go beyond the issues of bribes, payoffs and shakedowns. The should be seeking a way to assure the recovery of stolen money for countries that have been victimized. They should be working to improve the machinery of the international legal system so that civil fraud and corruption cases do not get snared by international

boundaries and the differences in national legal systems.

U.S. government anti-corruption efforts have focused on improving government management systems and raising the awareness of the corruption issue among elements of civil society. While these efforts are commendable, I believe that asset recovery must be included in the program as a priority. Victim countries should have our help as they try to find the money and repatriate it. We should help the victim countries go after the bankers, lawyers, and accountants who participated in laundering the proceeds of corruption.

The most important most important impact of a successful asset recovery program will be deterrence. If countries are successful in getting the money back, government officials in other countries will face the reality that they will not be able to keep what they steal. The day that the first banker or lawyer has to pay significant damages to a country for laundering one of its corrupt official's money will be the last day bankers and lawyers take on corrupt officials as clients. If a successful global asset recovery program is created the message will be that corruption does not pay and that assisting in corruption will carry serious financial risks.

The Problem of Recovery

With rare exception, efforts to recover funds stolen by departing heads of state have been unsuccessful. I know about the about the problems because I was asked to assist in asset recovery in two cases and have talked to people who participated in other efforts. Recovery efforts fail for the following reasons:

- Countries focus on criminal prosecution of outgoing government officials and the use of mutual legal assistance agreements without considering civil legal actions for fraud to recover funds moved outside the country.
- Countries fail to conduct national investigations with an eye to using the fruits of the investigation in foreign courts.
- Countries lack the money to hire lawyers and the expertise to follow the stolen money as it moves into the world's major financial centers.
- Very few lawyers in the developing world have the legal expertise to manage complex international litigation.
- Recovery efforts confront barriers in the international legal system. The problems include the collection of relevant evidence, the compulsion of testimony, and the use of evidence acquired in criminal investigation in civil litigation.
- There are political pressures on the successor regime to protect the powerful circle of people who surrounded, supported, and benefitted from the departing regime's dishonesty.

The Problem With Criminal Prosecution

The first step in going after a departed corrupt official is a criminal investigation. Incoming governments find that a criminal investigation is a political and practical necessity. The criminal investigation allows the victim government to bring mutual legal assistance agreements into play. Through the MLATs the victim government can access foreign evidence at a relatively low cost. The victim government can also request that the proceeds of crime be frozen pending the outcome of the criminal case.

In some cases, the MLAT requests from a victim government have become a significant burden on the Department of Justice. A victim government can use lengthy requests which can take many months to fill as a justification for inaction. On the U.S. side the resources available to meet the demands of MLAT assistance are limited. I have been forced to listen to serious complaints about U.S. MLAT responses in corruption matters from a number of foreign government officials.

The problem with asset seizure under the proceeds of crime agreements is that if the criminal case fails the funds will be released. If the government which has frozen the money has anti-money laundering legislation it can bring its own case, but then the issue will turn on whether a predicate offense has occurred. If there has been no predicate offence, then there has been no laundering.

All legal systems require a high standard of proof for a successful criminal prosecution. In the common law system it is proof beyond a reasonable doubt. In complex fraud cases the high criminal standard is very difficult to meet. Criminal cases against a departed head of state who has taken billions of dollars will be defended by an army of well paid lawyers. They will use the complexity to raise reasonable doubt.

Cases involving corruption are politically charged in all the countries they touch . If major banks or prominent people are involved in the country from which assistance has been requested the issue is especially touchy. On my trips to Mexico, for example, I am frequently asked about Raul Salinas's money. The Mexicans ask why the United States could not make a case against Citibank for laundering Salinas' money if Switzerland and Mexico could prosecute Salinas. No matter how legitimate the answer, there are lingering suspicions that the answer is political influence.

In my view the solution to these sensitive issues is to encourage, indeed facilitate a parallel effort at civil recovery. A civil action brought by the victim government in the country where the funds are located sidesteps all of the tricky issues of sovereignty. It also sidesteps the sensitive politics. . It gets around the problem of high standards of proof raised by criminal prosecution.

If civil recovery is used the cases will be tried in the courts of the United States, the United Kingdom, and continental Europe. The courts that try the cases will not be under the local political pressures and should in a position to resolve the conflict.

The Investigation

When a country has been looted and the government departs in haste or in a cloud of scandal the new government has a host of problems to face. In country after country the cupboard is bare both literally and figuratively. I remember being in Guyana shortly after a change in government during which the departing government took everything including desks, chairs, filing cabinets, light bulbs and toilet paper. In that setting the first priority is getting the government functional. Governments turn to the asset recovery issue after they are up and running. Often they get to the issue too late to be effective.

For the recovery effort to succeed it is essential to gather evidence, collect documents and interview witnesses as quickly as possible. It is also essential to do the investigation so that the evidence which is gathered can be used in court. The evidence must be kept so that a chain of custody can be established. Witness interviews must be documented, and if there is a deposition, the deposition should be recorded and transcribed. Witness interviews should meet the accepted international legal norms regarding the protection of human rights. A developing country which has just gone through a change of government finds all of this very hard to do.

In 1993, a representative of the Philippine Good Government Commission asked me to take on a portion of an asset recovery case against Marcos. Specifically, we discussed going after a portion of the overseas assets. I asked basic questions including what the basis of the government claim was. The answer I got was that the money in Marcos' account was obviously the property of the government because he got it while he was President and because his salary was too small to account for the wealth. The difficulty with that rationale was that at that time the Philippines did not have a law against unjust enrichment.

I asked whether the government had a documentary trail linking the assets to a specific fraud and I was told that it did not. I asked whether the government has obtained a civil judgement against Marcos in its own courts with respect to the assets we were discussing and the answer was no. Needless to say, I declined the representation.

Based on that experience and subsequent discussions with governments in Latin America, Central America, and Africa I have concluded that a government which has been victimized needs immediate expert legal and investigative assistance from the international community. It is only with experienced outside help that a government can gather and protect evidence, build an internationally credible case and establish its right to the funds. It has to do all these things at the same time it is trying to rebuild a wrecked economy and address the overwhelming problems it has inherited.

This need for expertise raises the next serious problem for an incoming government – money. By definition the victimized country is broke. Investigating an international fraud properly is very expensive. The out of pocket costs alone can be staggering. Fraud cases involve thousands of documents. If the fraud crosses international boundaries the documents are almost certainly in a variety of languages and will have to be translated – sometimes into more than one language. If the fraud involves the mis-pricing of commodities, experts are required to determine what the true market value should have been. The documents must be authenticated and translated. They

will have to be loaded into a document management system so that they can be used in a trial. Investigators will have to locate and interview witnesses. There will be dozens of witnesses all over the world. The out of pocket travel costs and the cost of transcribing interviews and depositions are backbreaking.

Confronted with realistic cost estimates, the first reaction of the victimized government is to suggest a contingent fee recovery arrangement with the lawyers and investigators. In many legal systems contingency contracts are not permitted. Even if they are legal, I will flatly assert that contingent fee agreements in these cases are unworkable. The amount of money a law firm would have to advance in a recovery case is so large and the case so difficult that the competent firms will want a very high percentage of the recovery or they will refuse the case. If a law firm takes the case on contingency it will go for the "low hanging fruit." It will recover the money which is easiest to get and ignore the rest.

Even if the firm wins, the percentage of the recovery they demand will become a political problem. To understand this you need look only as far as my home state of Maryland and the problems its contingency fee agreement with its lawyers in the tobacco case created. The taxpayers were properly outraged that the law firm wanted more than $1 billion for its work on the settlement. Imagine a multi-billion dollar recovery for a developing country on a 40% contingency contract. The lawyers would be roundly castigated.

My conclusion is the lawyers and investigators have to be paid in cash as they do the work Unfortunately the experts who do this work are expensive and there is no cheap substitute for their expertise.

The Litigation

As the investigation develops, experts in international litigation should evaluate the evidence and develop a global recovery strategy. The elements of the strategy may include civil suits against a variety of defendants, injunctions and civil freeze orders, criminal complaints in civil law countries. The factors which will have to be considered are jurisdiction, the ability to enforce a country's judgements, the doctrine of *lis pendens,* and the applicable law. The evaluation process should include consultation with litigation experts in each of the relevant countries.

The plaintiffs in civil cases could include the government itself, para-statal companies which were victimized, the central bank, or private entities which were forced into disadvantageous arrangements by a corrupt government.

Once a plan is developed, local counsel should be hired to move forward. Their activity must be monitored and centrally coordinated. If the job is done properly, the pressure should build for an overall resolution.

Civil cases are much easier to settle than criminal cases. A settlement in a criminal is an expected outcome. A settlement in a criminal case if often considered capitulation by the

government.

Some Needed Changes

When the U.N., experts group met, it discussed the most serious obstacles to civil recovery of the fruits of corruption. Members of the group suggested that some of these difficulties could be overcome through international agreement, perhaps through the treaty on corruption now being negotiated.

Some of the issues which were discussed included compelling the testimony of foreign witnesses. As matters now stand there is no way to compel a witness to travel from a foreign country to testify at a civil or criminal trial. If there is an MLAT or if there is comity, the testimony can be obtained through letters rogatory or through a judicial commission. A desirable improvement would be an agreement which would compel testimony on the following assurances:

- Use immunity in the country where the testimony is given.
- Safe passage to and from the country where the testimony is given.
- Assurance that no other legal action could be taken against a witness while in the country where the testimony is given.
- Payment of all expenses and a witness fee.
- The right of the home country of the witness to object on political grounds.

Other ideas which were advanced included:

- International agreement to waive bank secrecy in civil fraud cases, subject to court protective orders and court supervision of the data supplied.
- Legislation in common law countries to make information discovered as part of the criminal investigation available for use in civil litigation.
- International agreement that judgments obtained in grand scale corruption cases be enforceable on a global basis.

Finally there was discussion about providing special jurisdictional legislation to facilitate recovery litigation.

An International Recovery Foundation: One Idea

Given the complex nature of the legal problems and the difficulty of financing recovery litigation, I believe a new institution to manage recovery efforts must be created. It could be public and under the auspices of one of the international organizations or it might be a charitable non-profit under foundation auspices.

There are many possible models for handling recovery efforts, none of which are mutually

exclusive. For example, the victim country might assign the right of recovery to the non-profit in exchange for an agreement on the repatriation of the recovery money less the expenses. This approach would have the advantage of keeping the victim country out of the courts of other countries as a plaintiff. It would also help insulate the recovery effort from local politics. Alternatively, the victim country could retain the organization to handle and manage the case – just as a major corporation retains counsel.

As I see it, the organization would operate as a public interest law firm which would take on the global management of the investigation and the litigation. Its staff would help the victim country assess its case. It would help select the necessary team to handle the investigation and it would hire, supervise and manage the private investigators, forensic accountants, and lawyers who did the detail work.

To fund the operation I envision the creation of a revolving fund with money coming from donor governments, private foundations, corporations and individuals. The fund would be reimbursed from the recovered money. For the project to start up I believe that a fund of $50 million would be appropriate. That amount of money would give the recovery effort credibility and the capacity to take on several recovery efforts simultaneously.

The initial staff should include an executive director with experience in the field and several experienced litigators with a knowledge of the different legal systems and how they interact. These professionals could come from various governments on temporary assignment for a term of years or from the private sector as permanent employees.

I believe that the design of the entity should be flexible and should evolve with experience. In principle it should operate as a small boutique international law firm with a high degree of professionalism and flexibility.

I would want the organization to report regularly to the U.N. and to the OECD countries on the changes it suggests in the international system to prevent corruption and to facilitate the recovery of assets. I would also want to insure that the organization would generate a report on each case it completes to educate the citizen of the victimized country and international community on the facts of the case.

The world should see public justice done publically.

The International Banking Institutions

As this committee knows there has been a considerable problem with fraud and theft from the proceeds of international bank loans. The World Bank has hundreds of auditors looking into allegations of abuse, and although none of its findings have been made public, it is clear that there is a substantial amount of World Bank loan money to be recovered from contractors and dishonest civil servants.

The recovery organization could handle this task for the World Bank and the regional development banks. By moving the effort out of the banks themselves and making recovery a condition of the initial loan, the recovery effort could be depoliticized. No executive director would be forced to vote to investigate the employees of anther sovereign state.

If all the development banks were included in the effort, the result might be the needed level of transparency to improve their accountability.

I urge this Committee to press this asset recovery theme with the administration. I believe, that if the Committee presses forward, the idea will be discussed seriously and that there is a real opportunity to see a recovery entity created within the next two years. Without your support, I believe that the idea will be lost in the swamp of competing priorities.

Specifically you should ask State, Justice, and Treasury to offer their views and ask for their comments on what can and should be added to the new corruption convention to enable civil asset recovery. You should ask for their views on how to create an entity responsible for assisting governments with civil recovery.

Memorandum May 1, 2002

TO: House Financial Services Committee
Attention: Joe Pinder

FROM: Nicolas Cook
Analyst in African Affairs
Foreign Affairs, Defense, and Trade Division

SUBJECT: Abacha Case Chronology

This memorandum responds to your request for information on the disposition and recovery of funds and other economic resources that are alleged by the Nigerian government to have been misappropriated by the late Nigerian leader, Sani Abacha, Abacha political and business associates, and Abacha family members. The memo consists of a chronology of investigations, court actions, and related developments relating to the issues described above, and is based on news accounts appearing in a variety of press sources. Copies of the news stories upon which this account is based have been sent to you separately.

Abacha Case Chronology

1998

June

•Military ruler General Sani Abacha dies, reportedly due to a heart attack. Transition government headed by General Abdulsalam Abubakar takes power.

1999

May

•Former military leader General Olusegun Obasanjo, elected President in February, takes office. Vows end to corruption, and builds on anti-corruption efforts initiated by Abubakar transition government, including measures to recover assets allegedly misappropriated under Abacha.

June

•Obasanjo sets up corruption commission to investigate large misappropriations of public assets alleged to have taken place under Abubaker caretaker government. Commission headed by Christopher Kolade, an industrialist. Kolade panel finds widespread abuses in the awarding of $1 billion in government contracts that go "to the very top." In addition, $3.5 billion in foreign reserves allegedly disappeared under the transition government, between the period of Obasanjo's election in February and his May inauguration. Obasanjo suspends or scales down many deals made under Abubakar.

•A March 1999 corruption-related court suit brought by a Zurich-based trading company, Compagnie Noga d'Importation et d'Exportation, owned by billionaire financier Nassiru Goan, results in a June London High Court order freezing accounts linked to Abacha and associates. Noga is later joined as co-plaintiff by Nigerian government.

The case relates to a debt buy-back scheme under Abacha that arose in the wake of the construction of a huge – but failed project – the Ajaokuta Steel Mill. Construction of the mill began in the 1970s, and cost a total of about $5 billion dollars, of which $2.5 billion was owed to a Russian state-affiliated contractor. The facility never produced a single ingot of steel; it is now obsolete and Nigeria imports steel; and no prosecutions emerged after the failure. The buy-out involves $ 2.5 billion worth of financial assets linked to Noga's purchase of debt owed to the Russian government. Noga had paid $500 million to be transferred to the Russian government, but this money was allegedly diverted by Abacha into accounts held at Morgan Grenfell and Citibank. Freezes later reportedly secured for related accounts in the Channel Islands, Paris, Germany and Switzerland.

July

•Nigeria's President Olusegun Obasanjo makes personal appeal to President Bill Clinton and Prime Minister Tony Blair for help in tracking billions of dollars misappropriated by Abacha regime.

October

•Swiss Federal Police provisionally freeze accounts linked to the late Sani Abacha, Abacha family members, and associates at four banks in Geneva and one in Zurich while awaiting formal Nigerian request for mutual legal assistance. Frozen accounts relate to, *inter alia*:

- Abacha's eldest surviving son, Mohammed Sani Abacha.
- Abacha's widow Mariam.
- Abacha's brother Abdulkadir.
- Alhaji Ismaila Gwarzo, Abacha's ex-national security advisor.
- Businessman Abubakar Attiku Bagudu.
- Multiple Abacha-linked companies.
- Associates and employees of the above.

Enrico Monfrini, a Geneva lawyer representing the Nigerian government of President Olusegun Obasanjo, states that the government has documentary evidence proving the

diversion, on a daily basis, by Abacha and associates of a total of at least $2.2 billion from the Central Bank of Nigerian alone.

•Nigerian special fraud unit identifies suspect transfers under Abacha government to Austria, Britain, Brazil, Germany, Switzerland and the United States. Nigerian Justice Ministry consolidates criminal proceedings against members of an Abacha-linked criminal organization accused of embezzlement, fraud, forgery and money laundering.

•In Nigeria, Mohammed Abacha, 29, Abacha personal security chief Major Hamza Al-Mustapha, and four other former security operatives are charged with the June 1996 murder of Kudirat Abiola, the wife of Moshood Abiola, the late jailed millionaire opposition politician. He was widely believed to have won the annulled 1993 presidential election.

December

•The earlier Swiss account freeze is described as encompassing $551 million held in 120 accounts at Geneva and Zurich banks, according to investigating judge Georges Zecchin. Chief Geneva prosecutor Bernard Bertrossa states that a money-laundering inquiry has been opened.

2000

January

•Nigerian government lawyer Monfrini states that there are "concrete indications" emerging that Abacha assets are held in France, Germany and Luxembourg.

•In mid-month, Nigeria makes an official request for judicial assistance from Switzerland in relation to the frozen Abacha accounts.

•In late January, it is announced that a total of $645 million in accounts linked to Abacha, et al., have been frozen; this represents $94 million more than had been earlier reported.

April

•Geneva government prosecutor Bernard Bertrossa states that one unnamed person [later reported to be Abacha's son, Mohammed Abacha] is charged in Geneva with participation in a criminal organization, and with money laundering and fraud related to frozen Abacha-linked assets. More charges are expected. Some frozen account holders mount legal challenges to the Swiss asset seizures.

•Abacha family reportedly retains American lawyer, Johnnie Cochran, to defend Mohammed Abacha against murder in Lagos High Court and pursue frozen assets in Europe.

May

•Transparency International rates Nigeria as the 27th most corrupt country in the world in 1999.

•$600 million of Abacha-related assets are reported frozen in Luxembourg. Action involves eight accounts of offshore oil companies held in a Luxembourg subsidiary of an unspecified German bank; the funds are linked to two of Abacha's sons. The action comes in response to a Nigerian request for assistance. Luxembourg deputy state prosecutor Georges Heisbourg describes the accounts as illegally diverted Nigerian state funds.

•The Swiss Federal Banking Commission finds that Swiss banking regulators discovered a suspicious Abacha-related bank account in 1998 but did not report it. The Commission calls the omission a serious breach of Swiss bank obligations. Few details reported, but the case reportedly relates to a Swiss subsidiary of M.M. Warburg, a Hamburg-based bank. $144 million is alleged to have passed through a Swiss Warburg account over eight months en route to a foreign "sister" bank of the Warburg Swiss subsidiary. The transaction is said to relate to an aluminum plant in Nigeria built by the German company, Ferrostaal.

June

•Organization for Economic Co-Operation and Development (OECD) working group on bribery, which monitors international conventions, criticizes British anti-corruption measures. It states "serious concerns on the applicability of UK law to bribery of foreign public officials," in the absence of explicit provisions to criminalize corruption abroad. The British Bankers Association, which chairs the Joint Money Laundering Steering Group of the UK Trade Associations in the Financial Services Industry, later states that it is very difficult to establish the beneficiaries of bank accounts.

July

• Switzerland transfers $66 million in Abacha accounts to Nigeria via Bank for International Settlements. Some frozen accounts are released, leaving a frozen Abacha-linked asset balance of $550 million.

•$450 million in Abacha accounts is alleged by Nigerian authorities to have been deposited in over 20 accounts of London banks including HSBC, Barclays, Citibank, the French bank Credit Agricole-Indosuez, and subsidiaries of two Nigerian and four other European banks.

•A news account reports that a Nigerian investigations panel has recovered nearly $1 billion, most in funds transferred voluntarily by Abacha son Mohammed from accounts held jointly with the London-based Nigerian businessman and ex-Abacha aide Abubakar Atiku Bagudu. Mohammed admits that Sani Abacha gave him $700 million in cash over two years in bags and boxes. He reportedly stored up to $100 million in his Abuja home. In 1998, Abacha widow Miriam was detained while trying to depart for Saudi Arabia with 38 suitcases full of foreign currency. Stories in the Nigerian press emerge describing houses with walls containing cash.

•Swiss charges are reported as pending against Bagudu and Dharam Vir, an Indian businessman.

•Liechtenstein high court freezes about $100 million in Abacha accounts in three banks.

•It is reported that over past six months, Swiss authorities have frozen $750 million lodged in 120 accounts in 11 banks. The value of frozen bank accounts in Luxembourg is said to total $630 million.

•The total of assets misappropriated under Abacha are reportedly estimated by Nigeria to total $4.3 billion; of this, $2.3 billion is said to originate from Nigeria's central bank; $1 billion awarded from contracts to Abacha-linked front companies; and $1 billion in funds extorted from foreign companies.

•Official "Kuta" report alleging corrupt acts by top Nigerian parliamentarians causes scandal and public demands for sanctions against the guilty. Parliament votes to impeach its president, Chuba Okadigbo.

•Nigerian government panel report indicts six World Bank officials in Nigeria for alleged involvement in a scheme with agriculture ministry officials to defraud the government of project of at least $.5 million.

September

• Transparency International ranks Nigeria as the most corrupt country in the year 2000.

•The Swiss Federal Banking Commission reports that about one-third of the $660 million in frozen Swiss accounts came from banks in Britain ($123 million) and the United States, while at least $213 million was transferred from Swiss accounts to Britain during the 1990s. Other destinations included Liechtenstein, Austria, Luxembourg and the United States.

The Swiss Commission finds that three Credit Suisse Group banks (Credit Suisse Private Banking, Bank Hofmann and Bank Leu) and Union Bancaire Prive; the Swiss subsidiaries of the French Credit Agricole-Indosuez; and MM Warburg of Germany violated money laundering regulations and due diligence requirements by ignoring the origin or political associations of transferred funds. In many cases, the banks were found to have dealt directly with Abacha's sons Ibrahim (killed in plane crash) and Mohammed. Six other banks received reprimands

•Switzerland is reported as having introduced a range of new legislation, including a requirement that banks not accept money believed to be the proceeds of corruption by foreign public officials. Swiss officials' "name and shame" reporting of banks' actions is reportedly seen as a further factor motivating a decrease in illegal bank transactions.

October

•The UK Serious Fraud Office, which is endowed with broad powers to freeze assets and bank accounts, is reported to have initiated an investigation into the role played by London-based banks in enabling Abacha and associates to hold and transfer over $950 million in illicit funds through London. The action follows Swiss authorities' request to Britain for mutual legal assistance in Abacha case. Later, the Serious Fraud Office is reported to be undertaking a more limited investigation, limited to three banks tied to Abacha funds.

The Serious Fraud Office action also follows a June 2000 Nigerian mutual legal assistance request. Official responses to the request reportedly required criminal charges to be brought in Nigeria against those alleged to be involved. The initiation of the investigation comes in anticipation of charges against Mohammed Abacha in a Nigerian court for the murder of the wife of the late politician, Moshood Abiola. The Abacha case is said to be governed by a 1993 bilateral asset confiscation agreement between Britain and Nigeria.

November

•The UK National Criminal Intelligence Service reports that fewer than 25% of the UK's 554 banks reported a suspicious transactions in 1999.

December

•The Swiss Banking Commission files a complaint against Credit Suisse Group over Abacha-linked assets. Credit Suisse is accused of accepting $214 million from Abacha son Mohammed, and reportedly faces a 10 million Swiss franc fine.

•In early December, UK judge Lord Justice Rix throws out a legal bid by Abacha family lawyers to stop the re-opening of a civil case accusing Abacha of stealing 156 million pounds from the Central Bank of Nigeria.

•The UK Home Office reportedly refuses to assist in the recovery of Abacha-linked funds in Britain following legal objections from Mohammed Abacha, which later reportedly caused political embarrassment for the UK government. His complaint is alleged to have stopped the Home Office from freezing millions of dollars in London accounts. The Home Office reportedly tells Nigerian officials that they must answer requests from Abacha's attorneys, Titmuss, Sainer and Dechert, before taking action, raising fears that the account holders will transfer the funds in the meantime.

Reportedly, Nigeria had initially been denied mutual UK legal assistance after the British Home Office asked for proof of criminal proceedings against the Abacha estate by Nigeria. 123 Nigerian charges against Mohammed Abacha and business associate Abubakar Atiku Baguda were forwarded to the Home Office in late October . The Home Office did not act, instead advising Nigeria to bring its own civil action to freeze the Abacha accounts.

•Nigeria awaits the results of suit in a UK High Court bid to recover as much as $970 million in Abacha-linked assets. Nigeria is joined in its action by Compagnie Noga D'Importation et D'Exportation.

•*Sunday Business* (UK) reports the existence of three Citibank London accounts worth $60 million that are linked to Abacha's sons.

•UK legislation is reported to be under preparation for introduction in 2001; it would allow British authorities to seize assets and freeze accounts of foreign criminal suspects as soon as an official investigation is started in a foreign country.

•Nigerian President Olusegun Obasanjo states that Nigeria has recovered $800 million in looted Abacha funds and earned about $9 million in proceeds from the sale of confiscated Abacha properties. He promises to credit the recoveries to the 2001 national budget.

2001

January

•Abacha sons' lawyer requests that a Luxembourg administrative tribunal lift a March 2000 freeze on $616.4 million in assets linked to Abacha at Warburg Bank, Luxembourg. Abacha attorneys, Roger Nothar and Dean Spillmann, argue that Luxembourg cannot enforce a Nigerian request for the funds on technical grounds. The justice ministry rejects the claim as inadmissible.

•News sources in Geneva report that four people have been convicted of money-laundering on behalf of Abacha financial interests in Switzerland. Judge Georges Zecchin orders the guilty to pay fines of up to $125,000 for money laundering and confiscates 3 million Swiss francs. The action follows a June 2000 $600,000 dollar fine of a Lebanese-Nigerian businessman for money laundering on behalf of Abacha.

February

•Nigeria wins a UK High Court case linked to the failed Ajaokuta steel plant against Abacha family. Judge rules that no "global waiver" was agreed preventing the Nigerian government from seeking recovery of the funds.

•The Nigerian High Commissioner in London publicly condemns Britain for allegedly not acting to help recover looted Abacha assets, in contrast to Switzerland, Liechtenstein, Jersey and Luxembourg, which froze assets – despite British promises to do so. British authorities reportedly privately voice complaints alleging that flaws in Nigeria legal supporting materials have complicated the process.

March

•Fifteen British-based banks are censured by British regulators for violating anti-money laundering rules after a 3 month investigation of $1.3 billion worth of transactions in 42 Abacha-linked accounts; 15 of 23 banks had `significant' control weaknesses. Seven of the 15 had been sanctioned and given deadlines to rectify their procedures for dealing with suspected money laundering. Regulator refuse to identify the banks, which are reported to include British banks and branches of banks inside and outside the European Union. City of London police are expected investigate how almost 1 billion British pounds were transferred between 23 British banks holding accounts of Abacha family. Nigerian sources allege that the suspect banks – not necessarily the ones covered by the British probe – include Barclays, HSBC, NatWest, Royal Bank of Scotland, and U.S. banks Citibank, Merrill Lynch, and First Bank of Boston.

April

•London banks are reported to be continuing to holding up to 35 million pounds in Abacha-linked funds. Banks involved in Abacha-linked money laundering are alleged by a source named as being close to an official UK banking probe as Barclays Bank, Merrill Lynch, branches of the then Midland Bank in Golders Green and Finchley, Citibank NA, London Trust Bank and Standard Bank, the Australia and New Zealand Banking Group, Bankers Trust Company, Commerzbank AG, and Banque National de Paris. The banks are accused of accepting huge deposits from companies unknown to the banks, which were then

transferred around European banking centers; of failing to determine the legitimacy of funds they accepted; and failing to report possibly tainted funds to the National Criminal Intelligence Service.

•Swiss investigation of 19 banks – some also investigated by UK officials – reportedly finds that only five fully complied with legal requirements to determine source of funds accepted. Serious problems were reported at Credit Agricole Indosuez (Suisse) SA and Union Bancaire Privee. Credit Agricole Indosuez is alleged to have opened three accounts worth 120 million pounds while in possession of knowledge that the account holders were Abacha relatives.

May

•Lawyers acting for Mohammed Abacha announce an application to a UK court for a judicial review of a decision by UK Home Secretary Jack Straw to allow UK authorities to co-operate with Nigeria. The action allows the freezing of 26 bank accounts in 15 London banks accounts and the seizure of documents that could allow Nigeria to recover Abacha-linked funds. Nigerian request also reportedly includes request for the seizure of assets linked to 14 Abacha family members and associates, and 26 Abacha-affiliated companies.

July

•Nigeria announces a plan to sell 40 percent in equity of the Sierra Leone-based West African Refinery Company Limited; the holding was confiscated from the Abacha estate and Abacha ex-chief security adviser, Ismalia Gwarzo.

•A Geneva prosecutor indicts Mohamad Abacha and a Nigerian businessman for money laundering, membership in a criminal organization, and fraud. $440 million dollars is frozen in relation to the case. The action follows a Mohamad Abacha victory in a Swiss court preventing Swiss prosecutors from passing information about Abacha family assets to Nigeria until a legal assistance agreement is ratified between the two countries.

August

•Swiss prosecutor Bernard Bertossa states that dozens of Swiss-based bankers, lawyers and fund managers are to be questioned on their alleged role in laundering millions in Abacha-linked funds. Bertossa states that five people have so far been indicted under Swiss money laundering laws, and that as many as 60 persons – primarily intermediaries between the banks and the Abacha family – would likely face similar charges. Swiss laws reportedly require authorities to prove that such a defendant knew funds being hidden were from criminal activities before accepting care of them.

•Lawyers acting for Mohammed Abacha and Abubakar Bagudu secure judicial reviews of UK Home Office decisions to help Nigerian and Swiss officials to trace Abacha-linked funds by freezing London bank accounts and seizing documents. Review is set for October 3. Lawyers claim that their clients had repaid all funds in the Nigerian government inquiry and had been given immunity from further action.

October

•Judicial review of UK Home Office decision to help Nigerian and Swiss Abacha investigations occurs.

•Banks are ordered by a UK High Court to freeze Abacha-linked accounts. Banks in question include the London branches of Deutsche Bank and Commerzbank of Germany, France's BNP Paribas and Crédit Agricole Indosuez, and Credit Suisse First Boston and Union Bancaire Privee of Switzerland. Other banks named in the court orders include HSBC, Barclays and NatWest (part of Royal Bank of Scotland); U.S. banks Goldman Sachs International Bank, Merrill Lynch International Bank and Citibank; and several Nigerian banks. The orders name 106 parties that the Nigerian government alleges are "persons or entities which are thought to have handled funds belonging to Nigeria." The court instructs the banks to freeze the accounts and return certain funds to Nigeria.

•The UK Serious Fraud Office reportedly will investigate executives at London banks and London-based international investment banks over alleged acts in support of the laundering of 2 billion pounds linked to Abacha. It reportedly may use powers under which witnesses who refuse to answer questions can be imprisoned.

November

•Ajaokuta steel project accounts at the Australian and New Zealand Bank linked to former Anthony Ani, former Nigerian Finance Minister, and some linked to Abacha are ordered unfrozen by a UK court.

2002

January

•A UK High Court of Justice, of the Queen's Bench Division, reportedly orders Mecosta Securities, a firm owned by the Abacha family and business partners, to return between $140 million and $150 million to the Nigerian government in a case related to the Ajaokuta steel plant project.

•Anthony Ani, former finance minister under Abacha, refunds $13.7 million to the Nigerian government.

•Nigerian government announces the recovery of $146 million in embezzled funds from Abacha family. Abacha family had in late December released the money, including almost $8 million in interest, from an unspecified Luxembourg bank account.

•UBS, Switzerland's biggest bank, blocks a $60 million Abacha-linked account. The bank states that it had been misled in 1996 upon opening the account for a firm linked to two Nigerian businessmen and a British adviser who was seen as a reputable, longtime UBS client. The advisor wielded full power of attorney and exclusively represented the firm. The businessman is later named by *The Guardian* (UK) as Uri David, an engineering and property firm owner in London; he is reported to be a key donor to the British Labor Party. UBS matched names on the account to false ones used by an Abacha son from a list sent by Britain's Financial Services Authority. UBS blocks the accounts and reports them to the

Swiss Money Laundering Reporting Office. The action is reportedly seen as being embarrassing for UBS, which has advocated tougher international banking rules.

March

•The Abacha family is reported to be close to agreeing to an out-of-court settlement to return $1.2 billion in stolen public funds in return for "an official pardon" that would also end to all prosecutions against the Abachas except for criminal cases. The deal between the family and the government is reportedly being arranged between Nigerian Justice Minister Kanu Agabi and Abacha family representatives. It follows a three year-plus government effort to recover misappropriated funds, and follows the reported return of $750 million in 1998 and $168 million in January 2002. The deal would likely affect related financial crimes cases pending in Britain, Lichtenstein, Luxembourg and Switzerland, and would leave the Abacha family with estimated assets of about $300 million.

•Nigeria ends informal consultations with the International Monetary Fund (IMF), reportedly in the interest of "political stability, democratic consolidation, credibility and accountability." A one-year standby loan assessment agreement between Nigeria and the IMF had expired in August 2001, but the IMF board approved a technical extension to October.

April

•The Swiss Federal Office of Justice announces a global out-of-court allowing Abacha family to return $1 billion to Nigeria while keeping $100 million in funds "acquired prior to Abacha's term in office and which, according to Nigerian authorities, demonstrably do not derive from criminal acts." The deal requires the Nigerian government to drop certain criminal charges against Abacha's son, Muhammad Sani Abacha and Bagudu Abubakar. The settlement funds will come from Switzerland, which will transfer over $535 million to the Bank for International Settlements on behalf of the Nigerian government. Banks in Britain, Luxembourg, Liechtenstein and Jersey, in the Channel Islands are expected to contribute toward the settlement soon. The settlement reportedly leads to a to-date total of asset returns to Nigeria totaling $2 billion. A separate Swiss money-laundering inquiry will maintain a freeze on an additional $90 million in funds connected to Sani Abacha's brother, Abdulkadir Abacha.

•Press statements cite estimates of the total believed to have been misappropriated by the Abacha family as between $2.2 billion and $3 billion – down from earlier estimates of up to $4.3 billion.

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