US Lessons learned from prosecuting cases involving vast quantities of wealth

- Form specialized units of prosecutors, financial analysts and investigators
- Start with SARs and backup data, Egmont requests and Carin or other informal resources before MLA requests - ways to expedite the investigation
- Success often depends more on the difficulty of proving the predicate crime than the financial tracing
  - Embezzlement cases can be easier to prove than bribery
  - US foreign bribery law encourages self-disclosure for sanctions mitigation
  - Effect of availability of large financial rewards for information is unknown
- US forfeits more assets using civil non-conviction based forfeiture than criminal forfeiture
- Enforcing appropriate foreign court restraining/confiscation orders can be the most efficient way to move quickly to restrain and forfeit assets which are overseas
- When our ability to recover assets that moved through US correspondent banks is limited, it usually is due to one or both of the following obstacles:
  - 1) the funds moved to a jurisdiction that does not comply with MLA requests; or
  - 2) the predicate crime evidence is not available in the US
Confiscation theories

Criminal Confiscation

- Requires prosecution and conviction of defendant for crime for which confiscation is available
- Results in money judgment or confiscation order against specific assets in amount set by court
- Can be used to forfeit substitute assets
- Can be used to defeat claims of nominees or gifts
- Maybe easier to enforce abroad than restitution orders

Civil Non-Conviction (Judicial) Confiscation

- Can be used to forfeit assets directly traceable to the offense for which confiscation is available
- Can be used even if the owner is deceased, immune from prosecution or impossible to extradite
- Can be used to defeat claims of nominees or gifts
- Final Judgments subject to fewer appeals (than in limine prosecutions)
Lessons Learned from Repatriations Process

- Delays often occur in coming up with specific ideas/projects for how to use the money
- Parties sometimes struggle with implementing UNCAC obligation on all parties to prevent corruption and to use the assets in a transparent and accountable way
- Civil society is often silent - who should bring them into the discussions?