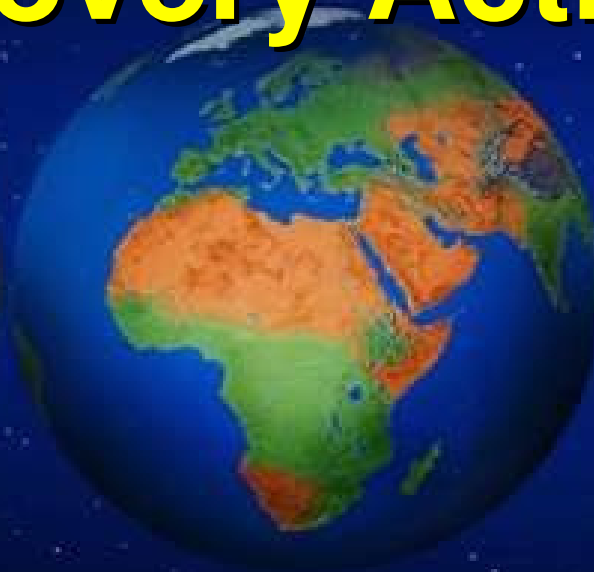


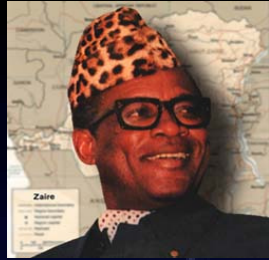
Asset Tracing in Asset Recovery Actions



Daniel H. Claman
Assistant Chief
Asset Forfeiture & Money
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U.S. Department of Justice



USD 4.5 to 45 billion



USD 3 to 14 billion



USD 1.5 to 5 billion



USD 4 to 8 billion



USD 1 to 2.8 billion



USD 23 million to 1 billion



USD 300 million or more



USD 106 to 700 million



USD 100 million

“We must work together to ensure that corrupt officials do not retain the illicit proceeds of their corruption... When kleptocrats loot their nations’ treasuries, steal natural resources, and embezzle development aid, they condemn their nations’ children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative.”

– U.S. Attorney General Eric Holder

Global Forum VI Doha, Qatar November 7, 2009

U.S. DEPARTMENT OF JUSTICE KLEPTOCRACY ASSET RECOVERY INITIATIVE

- **Attorney General Holder Announcement at African Union Summit Kampala, Uganda 2010**
- **Prosecutor Team Focused on Asset Recovery**
 - **Asset Recovery Requires Dedicated Resources**
- **Coordination with U.S. Law Enforcement**
- **Compliments Other U.S. Action to Deny Safe Haven and Support Asset Recovery**
 - **Technical Assistance**
 - **Visa Denial and Revocation**

OVERVIEW

- **Why Asset Tracing is Important to Asset Recovery**
- **How Asset Tracing Fits Into Broader Case**
- **Who does Asset Tracing Work and the Role of Prosecutor in Asset Tracing**
- **Types of Evidence**

ASSET TRACING DURING THE INVESTIGATION

- Identify Assets for Recovery
- Identify Location of Evidence
- Identify other criminal actors
 - Bribe Payers, Money Launderers
- Identify witnesses
 - Persons Extorted, Financial Advisors
- Identify New Leads for Investigation
 - Shell Companies, Trusts, Other Entities

ASSET TRACING IN PROSECUTION

- **Prove the Crime**
 - **Prove Benefit for Corruption Charge**
 - **False Statements**
 - **Transaction for Money Laundering**
 - **Jurisdiction for prosecution**

ASSET TRACING FOR CONFISCATION

- **Prove Basis for Restraint and Confiscation**
 - **Relationship between criminal defendant and property**
 - **Relationship between crime and property**

FORFEITURE SYSTEMS

- **Criminal Forfeiture**
 - **Need Personal Jurisdiction (*in personam*)**
 - - defendant must be present
 - **Need criminal conviction**
 - **ADVANTAGE: Government can forfeit criminal's legitimate property if illicit assets cannot be found**

FORFEITURE SYSTEMS

- *In Rem* Forfeiture
 - Need *in rem* jurisdiction - - court must exercise some control over the property
 - Only property derived from or involved in the crime can be forfeited
 - **ADVANTAGE:** Criminal conviction not necessary, can forfeit property from dead criminals or fugitives

ASSET TRACING FOR CONFISCATION

- **Conviction-Based Forfeiture**
 - **Prove Defendant Owns Property**
 - **Fight False Claims from Nominees**
 - **May Need to Show Property Involved in Crime**
- **Non-Conviction Based Forfeiture**
 - **Must Prove Property Involved in Crime**

ASSET TRACING FOR MUTUAL LEGAL ASSISTANCE

- **Provide Factual Basis to Compel Production of Records**
- **Identify Assets for Restraint**
- **Provide Factual Basis for Restraint and Confiscation**

TEAM RESPONSIBILITY FOR ASSET TRACING

- Investigator
- Summary Witness
- Expert Witness
- Prosecutor

INVESTIGATOR ROLE IN ASSET TRACING

- **Identification of Assets, Leads, Evidence**
 - **Must be Quick, Must Read the Documents**
 - **Before Trial May Not Need to Be Exhaustive**
 - **Document Exploitation Team**
 - **Investigator May Testify or Provide Affidavit**

SUMMARY WITNESS ROLE IN ASSET TRACING

- **Explain Financial Movements to Judge or Jury**
 - **Provide Financial Expertise to Make Sense of Complicated Transactions**
 - **Volume of transactions, records**
 - **By Oral Testimony or By Report**
- **Corroborate or Refute Witness Testimony**

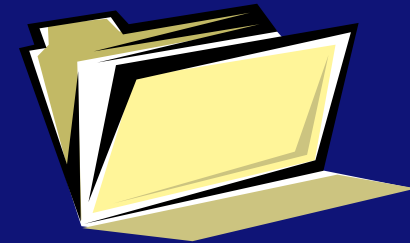
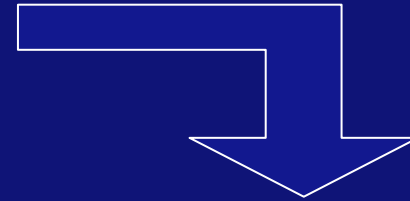
UNRAVEL THE MONEY TRAIL



Financial Criminal



Foreign Country



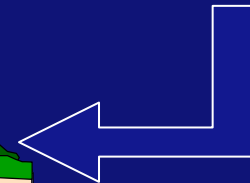
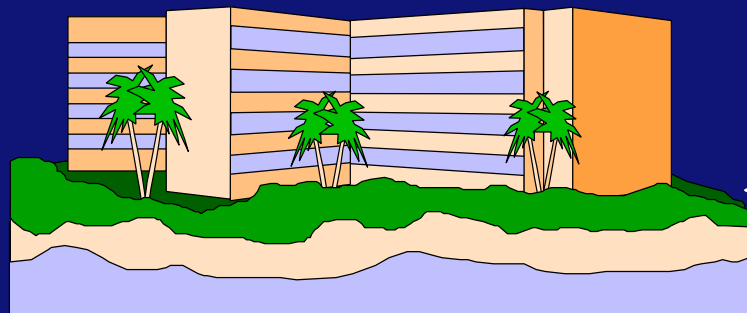
Shell Corporation



Domestic Bank



Offshore Bank



EXPERT WITNESS ROLE IN ASSET TRACING

- **Different Role from Summary Witness**
 - **But could be same person**
- **Opinion Regarding Lack of Business Purpose to Transactions**
- **Explain Fraudulent Invoicing, Kickbacks, Improper Benefits**

PROSECUTOR ROLE IN ASSET TRACING

- **Help Shape Investigation**
- **Request or Issue Production Orders or Mutual Legal Assistance Requests**
- **Conduct Witness Examinations**
- **Plan Presentation of Evidence**
- **Explain to the Court**

TRACING EVIDENCE

- **Bank and Financial Records**
 - **Wire transfer records, SWIFT, account opening documents, etc.**
- **Financial Advisors**
- **Co-conspirators**
- **Defendant/Target**
 - **Financial Disclosure Statements**
 - **Wiretap**
- **Corporate , Government Records**

COMPELLING PRODUCTION OF TRACING EVIDENCE

- **Production Orders, Subpoenas, Search Warrants**
 - **Bank Records, Breaking Privacy**
- **Sworn Statements or Depositions**
- **Can be Used as Evidence**

OTHER TRACING INFORMATION

- **Public Records**
- **Interviews**
- **Surveillance**
- **Financial Intelligence Units**
- **But Not Always Admissible as Evidence**
 - **Suspicious Activity Reports, FIU analyses**

MUTUAL LEGAL ASSISTANCE FOR TRACING

- **Formal Mutual Legal Assistance**
 - **Compulsory process needed (bank records, etc.)**
 - **Authentication for Admissibility**
- **Informal Mutual Legal Assistance**
 - **Compulsory process not needed**
 - **Egmont FIU requests**

INVESTIGATIVE CHALLENGES

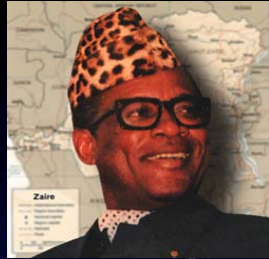
- **International Banking Transactions**
 - **Different authorities have different pieces of the puzzle**
 - **Mutual Legal Assistance Procedures**
- **Use of Trust and Corporation Structures to Frustrate Investigation**
- **Costs of Financial Expertise**

Asset Recovery as a Global Imperative

- **U.S. Department of Justice
Kleptocracy Asset Recovery
Initiative**
- **Urge Other Nations to Commit
Resources**
- **Together We Can Produce More
Recoveries**



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