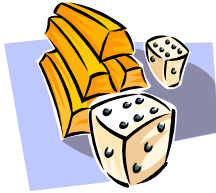


THE TURMOIL OF THE NEWLY FORMING EX SOVIET REPUBLICS AS THEY CREATE THEMSELVES AND TRY TO PROTECT SCARCE RESOURCES FROM BRILLIANT AND VORACIOUS POLITICIANS...OR, WHEN THE UKRAINIAN PRIME MINISTER LEAVES WITH MUCH OF YOUR MONEY AND SETTLES IN MELLOW CALIFORNIA, HOW DO YOU GET IT BACK? AND WHO ARE "YOU" ANYHOW? WHO REPRESENTS THE UKRAINE?



INTRODUCTION

Petro Kiritchenko and Pavlo Lazarenko and their families own massive estates in California, possibly bought with millions of dollars from Ukrainian governmental coffers. Currently under indictment by the United States government, they are also defendants in a civil case brought by this office in the local Federal Court seeking to attach the assets they are alleged to have bought with pilfered sums.

But the issues arising from that case go far beyond trying to prove where the money came from and where it went: the issues go to the very nature of governmental sovereignty and who decides appropriate legal and governmental action in a new nation located eight thousand miles from our borders. It goes to the very essence of what law and the courts are about.

The international nature of the web, multinational business and multi national terrorism have created new challenges to the various legal systems as they try to cope with the fact that national borders do not control the extent of communications via the web, transactions in business, or acts of "war" by terrorists. Equally compelling is the question of how governments handle the increasingly dangerous world of international embezzlement, money laundering, and other "white collar" crimes that multinational business engenders.

Nowhere is this more evident than in the series of scandals about government corruption that have occurred in the former Republics of the old Soviet Union in which business and government often act in an unholy alliance to loot the public treasury and the culprits leave the country and settle in Europe or America with their profits.

Perhaps a good and instructive example of the fascinating but complex issues confronting United States courts is exemplified by the current case involving the former Prime Minister of the Ukraine and his Deputy who now reside in the Bay Area, are under indictment, and allegedly possesses hundreds of millions of dollars in stolen assets according to Court filings.

Their defense is not only that they are innocent but that the newly formed Republics, who have almost no history of case law, do not procedurally allow the very type of assertion of claims against them that are now being made in California courts. And the local Courts, confronted with the question of determining the law of Republics only a dozen years old, find themselves in the difficult position of not knowing how to apply law that is barely made and is not yet interpreted by the new Republics themselves.

If you are the US judge facing such issues, do you use United States law? Local law that is so new that local courts have yet to even interpret the statutes? Who are the "experts" who can tell you if the law, itself, is so new no real "experts" exist? Does the law of the old Soviet Union apply at all?

What to do and how to do it? And does this create a loophole for possible felons who may find sanctuary in the soft warm climate of California with their possibly stolen gains?

And underlying it all, a much more basic issue: how can national courts confront international crimes and international criminals who can use internet and electronic transfers of stolen monies to easily evade national boundaries and national legalities?

Read on...



THE CASE

Many of you know our law firm currently is representing the official assignee of the **Ukrainian government** in its efforts to seek legal relief against **Petro Kiritchenko** (First Deputy Prime Minister to the Ukraine between 1995-6) and **Pavlo Lazarenko** (Ukrainian Prime Minister between May 1996 to July 1997) for allegedly stealing hundreds of millions of dollars from the governmental coffers of the Ukraine. (UTIC TRADING AND INVESTMENT COMPANY VERSUS WESTAMERCIA BANK, ET. AL, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, CASE NUMBER C-99-3073 MMC).

And many of you may be aware that criminal indictments were lodged against these gentlemen by the United States government for various crimes including money

laundering and that trial is set to occur in the next several months. Pending that criminal proceeding, our civil action against them is stayed by the court: we will proceed with our own case once the United States Attorney General finishes the criminal case.

But what few realize is that while the basic case is stayed, the one area of the civil case very active is an effort by the Defendants to demonstrate that the Ukrainian government had no right to use an assignee to pursue its claims against these two men and their alleged accomplices and to convince the local United States court to stop the action claiming that *Ukrainian* law prohibits such an assignment.

The fact that the Ukrainian government, itself, made the assignment and supports the current civil action is claimed to be irrelevant by the Defendants. Bolstered with a litigation budget made fat by the hundreds of millions in their pockets, it is not difficult for them to hire dozens of Ukrainian legal experts to argue that Ukrainian law *does not* allow this type of procedure to reclaim the assets supposedly stolen by the Defendants.

The Ukrainian government, by its assignee, UTIC, can also produce experts, of course, but the problem facing both sides is very simple: The Ukrainian Constitution is in the same condition as the United States Constitution of around 1795. It is brand new, in flux, the law is in flux, the government is in flux, the cases interpreting the Constitution do not exist since it is so new thus their courts have barely been able to begin the process of creating the interpretation of the law.

And the United States court, faced with many experts but few "official" opinions, aware of the sharp political divides in the country, and wanting to do what is "right" but not violate any international law, must confront the question of how to make the decision.

And one can expect that this same issue will be confronted with each stage of the proceeding and the same issues would confront any United States court encountering crimes and misdeeds alleged to have occurred in any of the ex Soviet Republics...or, for that matter, in much of Eastern Europe, equally new in its institutions, and in such diverse areas as Palestine or Vietnam, Khazatstan or China, Afghanistan or Zambia, all in the midst of creating new institutions and legal systems.

This article is not the proper forum to make the full arguments about *this* particular case. The court file is a public record and anyone interested in the details can go to the Federal Court and get the case file and read the hundreds of pages of briefs and allegations regarding the activities of the defendants and the banks who supposedly assisted them in transferring the monies.

Sometime in the next six months, a United States judge will be required to rule on Ukrainian Constitutional law in a case not merely involving hundreds of millions of dollars, but which will have wide repercussions in the Ukraine and much of the former Soviet Union as every governmental agent and agency watches to determine the risks inherent in leaving the country with ill gotten gains.

What we can discuss, however, is the more basic question of how the Courts (and governments) find themselves behind the eight ball in seeking to deal with the far more flexible and inventive people in business (and crime) who use borders as protection against effective relief. It is called Forum Shopping, in the trade, but it is

Forum Shopping with a new twist. Before one would go to a state which was corrupt or did not enforce the laws and live the good life. Now one goes to the nation which DOES enforce the laws, perhaps...but which laws and how?

Is it true that with enough money to pay for legal counsel and enough confusion in the new laws back home, one can move to the greatest country on earth and live the good life?

THE ATTACK ON THE LAWS

Of course, it is not only in civil cases the issue arises. Indeed, we have recently seen the Federal Courts reject efforts by the United States government to avoid our entire panoply of due rights protection afforded those accused of crime by claiming they are "prisoners of war." The matter will go to the Supreme Court, undoubtedly, but the issue is a critical one: in a world in which people act outside the borders of previously accepted national boundaries, when the line between combatants and terrorists, between criminals and governments, between business and government, becomes increasingly blurred, how do the courts adjust?



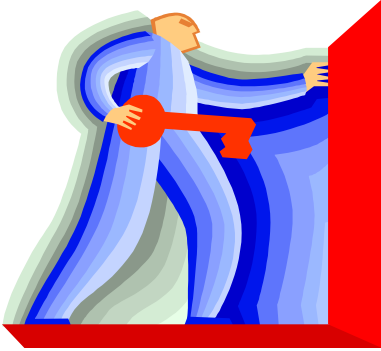
And the challenge comes from every arena.

The web is an international means of instant communication, commerce and crime often beyond the effective control of the local government. (Your ad on the internet appears on a Chinese or Congolese machine instantly and you can offer to sell products which are illegal in a Moslem or Communist nation but fully legal where you designed the web. They order your product. Have you violated their law? Have they?)

Or, as allegedly in our case, when electronic means were used to transfer funds from the government of one nation through the banking system of a dozen other nations, using a dozen "shells" that are legal in those nations, and ending up in one branch of a bank in California to buy real property in Marin...which law applies, which court applies, how is the nation state protected?

And in that one phrase..."nation state"... we encounter the real issue. Nation states have existed for about five hundred years and became the dominant form of both government and legal systems in the last two hundred years. Technology, however, has increasingly made them less and less appropriate in terms of controlling the international activities of more and more entities and institutions: from terrorists to companies, from criminals to internet advertising, the nation state bears no real "border" or limit to the activities of the entities NOR DOES THE LEGAL SYSTEM AND LEGAL PROTECTIONS OF THAT NATION STATE.

The obvious solution would seem to be a system of international law to confront the increasingly international nature of these activities. But that concept is even more difficult to confront than the current efforts to interpret the foreign nations local laws.



INTERNATIONAL SAFE GUARDS?

It is more than an issue of passing laws and convincing nations to adhere to them. The issues go to the very nature of law itself. Let us chose a typical example:

Assume I want to sell my brand of whiskey on the web. I live in New York, buy it in Scotland, promote it world wide on the web, have it shipped directly from Scotland to the customer after receiving my credit card payment from the web form. I make a good living and deliver a good product. I have a family and go to Church regularly and consider myself a good citizen. Two years ago I shipped a case of my finest product to Riyadh and my customer was arrested the next day for receiving contraband. From the Saudi point of view, I am an international criminal and have violated both their civil and religious laws.

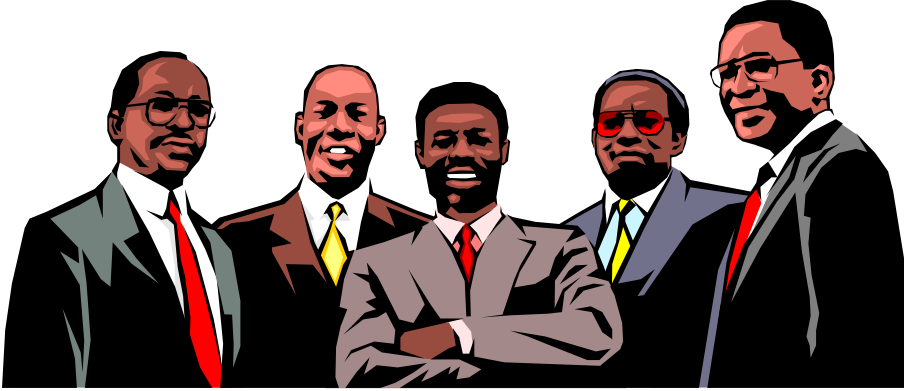
Am I a criminal for selling contraband prohibited by them? Both my customer and my business are subject to very strict punishment in Riyadh. So, when the Saudis demand I stop and go to court in America to do that, showing clearly that I was selling product into their nation illegally, what is the United States judge to do?

Sounds simple? Well, let's change the facts a bit. How about my business being hand guns and I sell them via the internet into Britain or China where it is illegal? Now am I in trouble?

And if that does not give you pause, let us assume that hashish, which is sold on every street corner in parts of Afghanistan, arrives on your doorstep, bought by your son from a web site originating in Kabul. Or pornography which is entirely legal in Denmark and which your son bought over the web? Or...?

The issue is not just one of law since law reflects the belief systems and values of the society. The problem is that our values and religions conflict yet we are engaged in multinational activities which some nations consider entirely proper and other nations consider a crime.

Assuming we could convince them to enforce the law: what law?



COMMON GROUNDS FOR INTERNATIONAL PROTECTIONS?

Certain areas of common interest do apply. Such acts as murder and terrorism are condemned enough by enough nations that an over arching system of international laws can apply. While many argue that it was only the military might of the United States that resulted in the international outrage at the terrorism of September 11, it should be recalled that the outrage in almost every nation on earth was expressed months before the United States took military action.

Indeed, it is in criminal laws that most of the effective international efforts are being seen. Please read our article on the Newsletter Page on the **Federal Corrupt Practices Act**. At least on the books, the various governments in the world are usually in agreement that violent crimes and many property crimes are prohibited and subject to prosecution. Money laundering is almost universally prohibited and subject to dozens of treaties.

The problem, however, is the gray areas. Murder is universally condemned. But much of what passes for commercial transactions or appropriate "personal" actions is dependent on very different belief systems and there is no way that a uniform approach is conceivable, at least in today's world. And governmental sovereignty is jealously guarded by all nations, including ours.

Thus, while genocide may be condemned and labeled "illegal" by all nations, and while we can slowly but surely garner enough support in our legal system to commence international tribunals to handle the more extreme cases, the United States has opted out of the World Court as an appropriate forum to consider its own citizens' conduct in military operations. In that respect, Iran, Iraq and the United States are equally adamant that no outside entity will be allowed to impose its system of laws or justice upon its citizens.

And thus we create a complex and contradictory set of legal systems and international agreements which, without much logic and little consistency, seek to enforce international norms that do exist, but do not have effective international forums to enforce the laws. Thus each nation ultimately keeps its own system intact and will decide, on its own, what laws to enforce and how to enforce them.

While there are exceptions in various defined areas, such as certain types of commercial transactions, the fact is that each nation continues to protect its

own "turf" and enforce its own laws and will only apply foreign or international law on a limited basis and NEVER when such laws conflict with its own.

We have, in short, not transcended the basic system of legal systems created two hundred years ago, despite the massive alteration in speed and ease of all types of communications. We are using, for the most part, laws appropriate in 1900 and seeking to apply them in 2000.



FUTURE TRENDS: CAN WE STAY AS WE ARE?

Of all institutions within the average nation, legal institutions are usually the last to adjust and this period of time seems no exception. This is probably good since the law forms the basis for so much of the rest of our society and change without careful planning and forethought can be most dangerous.

But the fact remains that the world has altered so dramatically that the old concept of nation states may no longer be appropriate for handling much of our commerce and interactions. If we intend to use the international tools that technology has created, then we are going to have to ultimately agree on a system that allows both predictable and equitable resolution of the inevitable conflicts that ensue.

That does not exist now. Indeed, even in ancient nations which are huge markets such as China, there is no effective commercial system of courts. One either uses cash for all business or risks all in engaging in business there. And that is the norm in most of the Third World and a surprising number of supposedly "First" and "Second" World nations. Cash is the method of trade (Letters of Credit) in more of the world than not, reflecting a lack of faith in the legal system's effectiveness in more of the world than not.

Which takes us back to the Ukraine and the challenge faced by our American judge pondering a Constitution in a foreign language, with no experts who are really "expert" for how can you be when the document is newer than the average car on the road, and trying to determine how on earth to do what is right. He may very well ask why an American judge is put into this odd position, what does he have to do with the Ukrainian legal system, why need he pour over Ukrainian law so new the ink is wet while sitting in San Francisco?

Because that is the only system we now have: national courts trying to enforce international norms insofar as their national governments let them.

When and if it really matters governments find ways to create effective international norms, laws and forums to protect themselves. Our Ukrainian defendants face dangerous *criminal liability* precisely because the various governments found it easier to pass appropriate criminal laws since they hoped to protect governmental activity. But the problem arises when one goes beyond seeking to imprison a felon, for when the people of the Ukraine want their money back, they need to seek civil relief and move from the criminal courts to the civil and business forums which remain relatively primitive in their efforts to determine appropriate law, forums and relief.

Business has survived by using cash and avoiding local courts. This will not work for the web, however, that increasingly vital mode of international business, nor is it working well for the type of white collar crime alleged here.

If and when the private citizens and business communities of the various countries finally realize that ignoring the inherent problems and conflicts of law or using Letters of Credit are not the answer and that there is a pressing need for uniform international laws and forums that are effective in all areas of business, banking and white collar crime, then we will see the same type of progress in civil court as in criminal court.

Who speaks for the Ukraine? What law applies? Is relief really possible?

Stay tuned and find out.

