

# University of Washington School of Law

## Transcript: Ramasastry Gittinger Professorship

April 30, 2009

### **Greg Hicks:**

Everyone, welcome. Thanks for coming out on this beautiful afternoon. And this wonderful, full room is just a testament to how we feel about our glorious colleague, Professor Anita Ramasastry. We are installing her today as the Wayne and Anne Gittinger Professor of Law. I'm Interim Dean Greg Hicks and very pleased to be presiding here today.

Just to announce a few distinguished visitors that we have here with us today, members of the judiciary, Judge Marlin Appelwick of the Washington Court of Appeals and Judge Don Horowitz; and members of the Washington Law School Foundation Board and the Law School Alumni Association Board who are with us today, Joe Brotherton, Paula Littlewood of the Washington State Bar Association, and Craig Wright. So thank you all for coming out today.

This is our first professorship installation of this year. Last year, we had a raft of them, and this has just been a glorious thing for the school. These gifts are enduring ones. To have the great privilege of being able to have endowed professorships and chairs for a faculty is so important. It extends the reach of their scholarship. It gives them resources for the travel, hiring, research, assistants, all the things that are necessary for a truly effective career as a producing scholar, and so we are so grateful for the vision of people who make these permanent endowments.

These are enduring gifts; they go from year to year. Then, over time, of course, each professorship takes on additional luster, from the gifts of whoever the incumbent might be, who have this string of wonderful holders of the different professorships.

The Gittinger Professorship was our very first, and the inaugural holder of that professorship was our own Professor Richard O. Kummert, whose work in corporations law scarcely needs to be described for anyone who's been in Washington for a time, and of course, just one of the leading citizens of our bar and of the law school. And it's a splendid thing to have this turnover of this professorship from Dick Kummert to Professor Anita Ramasastry. And so here a legacy begins, and it's a rather splendid one, if that.

This endowment was established by Wayne and Anne in 1990, as I said, and so

it's been in place for a time. And again, as I said, it's something that will be enduring over time.

The Gittingers have been great friends in so many other ways to the University of Washington, not only this professorship but endowed scholarship for a varsity athlete, University of Washington letter-holder who's admitted to the school of law.

And their philanthropy here in the region is really peerless. They do so much, they give so unstintingly, and ask so little in return. And the university, the law school, just has such great reason to be grateful for their generosity and for their vision and want to thank them in the strongest way we can for just that commitment to us over all the long years.

So, now, it falls to me to introduce Wayne Gittinger of the class of 1957, a partner at the Lane Powell Law Firm, currently a member of the Tyee Executive Committee, a member of the board and executive committee of the Seattle Sports Commission, and a BA holder at the University of Washington in 1954, and our own JD from 1957. And Wayne will be talking about the Gittinger Professorship and then introducing Pat Kuszler, who will be offering some comments and thoughts on her friend, Anita Ramasastry. Wayne?

[applause]

**Wayne Gittinger:**

Thank you. This law school's a lot different than one I went to, in many ways.

[laughter]

At least two buildings ago. But as Dean Hicks mentioned, I graduated from law school here in 1957, and it was a great experience here. And I remember so much, all the professors I had and all the friends I made, and I'm honored to be here to say a few words about that.

About, I guess it was 18 years ago, I think you mentioned 1990, but I think it was maybe 15 or 16, we decided that we could give back some way. So we created this professorship, and Dick Kummert has been there for all those years, and now we have a new person, and that's terrific.

And I'm really here to introduce Professor Pat Kuszler. And I had not met her myself until today, earlier, but learned some things about her, and among others, that she's the Charles Stone Professor of Law. And Chuck Stone, as I knew him, was a good friend, and we miss him. Professor Kuszler is also a director of the Center for Law, Science, and Global Health, and the new Health Law LLM

program that's going to start, I understand, this coming year. That will be a terrific thing.

She's an adjunct professor at the UW School of Medicine, and also the School of Public Health. A BA from Mills College, her MD from Mayo Medical, and her jurisdoctor from Yale University. So she'll be a great addition to this staff. Thank you very much. And Pat?

[applause]

**Professor Pat Kuszler:**

Well, it's my honor and pleasure today to introduce our colleague and friend, Anita Ramasastry, for her installation as the D. Wayne and Anne Gittinger Professor of Law. Many of you in the audience are as good of friends with Anita as I am, so it's a particular pleasure for all of us to be here today.

Anita's early childhood, as some of you may know, was spent in New Jersey, where both of her parents worked as scientists and engineers in the then-early field of telecommunications. Like many children growing up in that time period, teachers and parents, neighbors all pushed Anita, a very bright child, to follow the Holy Grail of science or medicine as a career.

However, very early on, Anita disabused them of this notion. In fact, it was on a British Airways flight to the UK, at age four, that Anita developed her first career set of aspirations. Thrilled by the experience of flying and travel, she determined, in short order, that she would become a flight attendant.

[laughter]

Alas, her wings were clipped, albeit temporarily, to start kindergarten. Despite this frustration of her early career plans, Anita was a terrific student, throughout grade school and high school, and ultimately was admitted to Harvard College. While she was at Harvard, she became deeply interested in South Africa's anti-apartheid movement, which was just unfolding during that time. She soon had more of an opportunity to become involved when she was appointed to serve on Harvard's Shareholder Advisory Committee.

Sounds kind of boring, but actually, using her position on this committee, Anita was able to help push Harvard to divest its South African investments. She would maintain this position on the committee for several years, and later went on to argue for Harvard to divest their interests in the tobacco industry.

Before going to law school, Anita moved to Australia to study at the University of Sydney and their master's program. She received her master's in history, and her

thesis project focused on historical literature about women migrants.

During her time there, naturally, she took advantage of the opportunity to see the country...a very large and sparsely populated country, she realized when she spent her Christmas holiday on a distance camping trip with eight other students.

December is midsummer in Australia. It's very, very hot. It's particularly hot when you're trapped in a tent with eight other very diverse students, ranging from an ex-Korean Marine sergeant to a beauty queen who came with her electric curling iron. Anita's skills at building a consensus were honed during this period of time.

[laughter]

They've served her well since.

After returning to Boston, she continued her education at Harvard Law. By the end of her first semester, she knew she wanted to be a law professor and soon began to pick up various teaching engagements, working as a teaching fellow in history, in legal writing, American government and constitutional law.

She also found time to do other things, like develop her poker game, which she became an extreme expert at, and it was a dedicated pastime for her and several of her friends.

She also met Walter Walsh, her future husband, while at Harvard. It seems that the Harvard dorm system is set up in an unusual fashion, where the men's floor has a TV and the women's floor has a kitchen.

[laughter]

Well, forget the sort of obvious gender issues that are here, but suffice it to say that opportunities and need for collaboration are obvious.

During her law school years, she developed wide-ranging interests in law, many of which were deepened by her work during and immediately after law school. Many of these was law reform in transitional and emerging democracies.

After law school, she became one of the charter members of the Central European University in Budapest, a new university funded by George Soros. One of her mentors there, Helen Hartnell, is with us today, and Anita has continued to work with students in Budapest and around the world on legal reform, particularly with respect to commercial law.

Following her initial work in Budapest, Anita returned to New York, where she went to work at the Federal Reserve Bank in New York. There she worked in the area of derivative and other financial fraud fallout issues that came about after the

Wall Street debacle of the 1980s. While there, her interests and knowledge in banking law and payment systems grew, a very technical and difficult area. She largely credits Martin Grant, her boss at the Federal Reserve, for having the patience and the fortitude to help her become the expert she is now today in this field.

While living in New York, Anita volunteered at SAKI, an organization assisting South Asian women who were victims of domestic abuse. Later, she would weave this experience into a project here at the law school called the Immigrant Families Advocacy Project, which trains lawyers and law students to assist immigrants who are victims of abuse, neglect, or human trafficking.

Anita came to us in 1995. I was one of the lucky people on the appointments committee. In fact, I was in my second year of teaching myself. And we were tasked to go look for the best and brightest candidates, and Anita's resume floated right up to the top.

Anita came to Seattle on a blustery December day. So blustery, in fact, that gale-force winds and rains prompted the numerous businesses to close and airlines to cancel flights. Never having visited Seattle before, Anita would have only seen old Condon Hall, which is where she went pretty much directly from the airport, and returned to the airport almost directly after her talk. If Lou Walter had not taken her for a ride around campus before whisking her back to the airport, she would never even have seen main campus.

Moreover, poor Anita never even got the classic interview dinner, which is beloved here at the law school, and ultimately had to learn about Seattle from a King five production titled "First Steps to Seattle." Miraculously, Anita and Walter joined our faculty despite this.

After she arrived in '96, Anita quickly established herself as a teacher, scholar, and all-around superstar. She's been named Law School Professor of the year not once, but three times, and won the university-wide Distinguished Teaching Award in 1998.

Her teaching interests include banking law, payment systems, business and commercial law, both domestically and abroad. She has diverse and intriguing research and services projects. She's served as a commercial-law adviser to the European Bank for Reconstruction, the US Agency for International Development, the European Commission, the Open Society on Law Reform, and most recently she's been working with James Filpi at the United States Department of Commerce on commercial law reform in the Arabian Peninsula. Another facet of her research has focused on claims resolution in the wake of war, political corruption, terrorism, and human-rights violations. She worked with a special claims tribunal in Switzerland on claims related to Second World War

bank accounts.

She worked on revamping the Uniform Money Services Act here in the States to close loopholes in payment systems related to terrorist financing after 9/11; and this last fall, she worked at the World Bank in Washington, DC, as part of the Stolen Asset Recovery Initiative, dealing with stolen asset recovery in cases of political corruption.

She also directs the Commerce, Crime, and Conflict Project at the Fafo Institute for Applied International Studies in Norway. She is now the world's leading authority on the emerging field of business and human rights. I will take a moment to mention that, of course, this involves a great deal of travel, hearkening back to her early aspirations to travel.

While succeeding in all of these research and teaching and service endeavors, Anita's also built a family and a large network of friends here at the law school and in Seattle. Anita and Walter have two children, and have also renovated their 100-year-old house over the last 10 years.

Many of us, of course, have had the good fortune to be part of the network of friends. And of course, we're all thrilled to see Anita recognized here today for her work and her contributions by the Wayne and Anne Gittinger Professorship.

[applause]

**Dean Hicks:**

Thank you so much, Pat. And of course, just under the skin of all the remarks, all the accolades is the impact that this has had on Anita's students over the years. Her work, her presence, her example have just been a constant inspiration to the students. And there's a combination of intensity of engagement and just evident caring and involvement in the thriving of her students that I think lies so much at the heart of the success that she's enjoyed.

And so, now it's my pleasure to call Professor Ramasastry to the podium, and to, I guess, drape a medal is what I'll be doing.

[laughter]

And the inscription on the medal is quite simple, but it says everything that it needs to say: "D. Wayne and Anne Gittinger Professor Law, Anita Ramasastry." And it's my great pleasure to invest you with this medal, which is only a symbol of the professorship itself. And I just invite you, as I drape, to please applaud.

[applause]

The podium is yours.

[applause]

**Professor Anita Ramasastry:**

Thank you so much. And I'm both nervous and also emotional.

I have to first say I really love my job. I love being an educator. And while this is not the Oscars, it is a chance to really thank so many people, because I wouldn't be here today if it weren't for your support.

I really, first, want to thank Mr. and Mrs. Gittinger for their unwavering support of the law school and the University of Washington. They have been referred to by the university administration as quiet leaders at the university and have provided tremendous leadership and financial support for our faculty and our students and staff.

Not only have they supported this professorship, but they have also provided scholarships for student athletes at the law school and the creation of the beautiful Gates Hall. And of course, they're also strong supporters of the university itself. So, Mr. and Mrs. Gittinger, thank you for all that you've done.

I'm also honored to follow in the footsteps of Professor Dick Kummert as the second Gittinger Professor. As the Gittingers well know, Professor Kummert has trained generations of our graduates in corporate and business law and provided them with an excellent foundation for their work as attorneys. Mr. and Mrs. Gittinger, I am committed to that same goal of making sure our business and commercial-law teaching and scholarship remains excellent to this school. So thank you.

I also want to let the Gittingers know that not only do I love commercial law, which I do, but I'm a big Husky fan as well, specifically college basketball, and my husband as well. So we also share your love of university athletics.

Now, before I take you on a bit of an adventure, and a bit of a crazy ride, I want to thank a few others. I want to dedicate this talk to the memory of my friend and mentor, the late Professor John Fitzpatrick, who I miss so very much every day. And I really thank Dean Hicks and the law school community for bestowing this honor on me, with special thanks to Assistant Dean Cox and her wonderful colleagues and staff, Laura Paskin, Shari Ireton, and Hannah Hewson.

And then I want to recognize my friends and family, my spouse and my colleague, Walter Walsh, and my two small children, who are too small for a

lecture like this so they're outside playing, Angelie and Curon, as my biggest fans and supporters. I'm very honored, also, to have my wonderful sister, Cyrah, and my brother-in-law, Chris, and nephew, Rome, here today.

Pat Kuszler really is my closest friend on the faculty, and her friendship over the years has been one of my high points of my work at the university. That means so much to me.

I also have several mentors in the audience. Martin Grant was mentioned, my friend and my boss at the Federal Reserve Bank of New York. And I asked and he came in yesterday. As you can imagine, people at the New York Fed are working really hard right now. Really, really hard. So give him a pat on the back after the lecture.

Professor Helen Hartnell, who came in from California. She's another law professor, and she was my mentor at the Central European University in Budapest. Dean Emeritus Ron Hjorth. Department of Commerce Attorney James Filpy. And Sharon Nelson, the first director of the Shidler Center for Law, Commerce, and Technology at the law school. And professor Michael McCann.

Each of these people has shown tremendous kindness, patience, and encouragement as I cut my teeth in new roles and positions. And I can say, if they had not been patient and willing to teach me new skills, I would never have reached this stage in my career, so their patience, I'm really grateful for.

I also want to thank my assistant, Ruth Beardsley, who has also provided me tremendous support and encouragement for more than a decade. I can say without a doubt that it is her guidance and assistance that has been most critical in my ability to thrive and to be effective in my work as a professor. Thank you, Ruth, for your unwavering support.

One person who could not be present today is Professor Lou Wolcher, who, along with Pat Kuszler, saw my potential and called me out to Seattle, and has been an intellectual role model for me and many other faculty. He is currently visiting as a scholar in Bergen, Norway. So thanks. And there are many other people here whose love and support I cherish, so thank you.

And now to my talk. Now, the title was "The Quest for Global Financial Integrity," which is a little dry. But the nickname for this talk, as I've been kind of thinking about it in the shower, has been "Lifestyles of the Rich and Infamous," right?

And so here's my first question to the group, which is, what do a kleptocrat, and if you didn't know what a kleptocrat is, you'll find out today, a tax evader...and nobody here knows what that is, right, and a terrorist have in common? And the answer is that they all need banks and bankers. More generally, they have all

benefited from bank secrecy and the existence of so-called off-shore, or banking-secrecy, jurisdictions. In each instance, these actors need to move illicit funds in order to either hide evidence of illegal activity or to finance illegal activity.

And so, in this short talk today, I want to explore, number one, the current emphasis on financial integrity which arises out of the debate about tax havens, which has been in the news quite a lot recently. Two, explain one particular type of illicit flows. Those are the product of grand corruption. This is when we're talking about big, bad dictators who steal and rob the treasuries of their countries. And examine the weaknesses in the current financial system which allow for these illicit flows to continue. And finally, conclude by analyzing what needs to be done to rectify the situation.

Now, why did I become interested in this topic? You don't really take a course in Illegal Financial Flows 101 or Terrorist Financing in law school. But in 1998, soon after I had joined the faculty, the Swiss banks came under fire with respect to their retaining assets of Holocaust victims. And some of you in the room may remember that. And under scrutiny, they were also criticized for harboring Nazi assets and serving as the bankers to the Nazi regime.

And so it was a painful time for Switzerland, as it came to terms with this aspect of its past, and there were a lot of other European banks and insurers and others who had to deal with claims relating to World War II. And because Paul Volcker, the former chairman of the Federal Reserve, was asked to start a special commission, I became asked to go to Zurich to establish a special claims tribunal to deal with this, because his general counsel knew of my research in the area of banking and money laundering and invited me out.

I also realized that at the same time Switzerland was dealing with the issue of World War II bank accounts, it was also dealing with claims to assets of the deposed leader, Ferdinand Marcos, by both the Aquino government and by victims who had suffered human-rights abuses by Marcos's regime. So Marcos was actually sued in court in the US by some of the victims.

And so I wrote an article which tied these two different events together but which examined Switzerland and the role of bank secrecy and the role of financial institutions in shielding the assets of leaders who are criminals. And this has led to a continued examination of the relationship between bankers and illegal money. And I like bankers. Don't get me wrong. I teach people about banking law. But I am looking at and am critical of some aspects of the financial sector.

So let's move forward to more than a decade later. The problem of bank secrecy is still with us, but perhaps the tide has turned, due to the global economic downturn. The time is quite opportune for us to ask banks to clean up their acts.

Now, earlier this month, the leaders of the G-20 announced that as part of their plan to strengthen the international action, they were going to take action against non-cooperative jurisdictions, including tax havens.

And you may remember the quote from the G-20 summit which said, "We stand ready to deploy sanctions to protect our public finances and financial systems. The era of bank secrecy is over." And they continued on, in another communique: "We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information." And there was a list published of countries that were seen as not cooperating when it came to tax evasion and were considered tax havens.

And the word that was used is "We note" that the OECD has published this list. And as you may recall, President Obama was given great applause because he brokered a deal between President Sarkozy and Hu Jintao, by using that word "note" rather than "condemn" in the statement. So that was a particular moment.

But the G-20 continued that "It's essential to protect public finances and international standards against the risks posed by non-cooperative jurisdictions. We call on all jurisdictions to adhere to the international standards in the prudential, tax, and anti-money-laundering areas. And we stand ready to take agreed action against those jurisdictions which do not meet international standards in relation to tax transparency."

So, as you remember the tax-haven controversy. So, you have leaders of the G-20, major countries of the world, taking a public stance condemning tax evasion and countries that are not transparent and don't cooperate to stop tax evasion and tax fraud.

And as you may remember, the tax-haven controversy broke after Germany paid millions of euros for names of German citizens that had secret accounts in Lichtenstein, right? That there was a disk that was basically sold to a German investigator, and as a result Lichtenstein was identified as one of these tax havens. And more recently, the US has been cracking down on tax evasion in Switzerland.

Several days ago, Switzerland, under pressure to join the global crackdown on tax fraud, asked the United States to drop a legal case involving UBS Bank in return for a new tax accord that the two countries are about to negotiate. UBS agreed recently to pay a \$780-million fine and to disclose the identity of about 300 of its US clients, and I hope there's none of you in the room to avert criminal charges. But the US authorities are still pursuing these cases, seeking access to data of about 52, 000 other Americans they say are hiding about \$14.8 billion in assets in Swiss bank accounts.

So, like many other offshore financial centers and tax havens, Switzerland has

come under intensifying pressure from governments keen to root out tax dodgers at a time when the global economic crisis is shrinking their revenues and forcing expenditures sky-high.

So my first point is really this focus on tax havens and tax evasion that is coming at a time when countries really need and want access to those lost revenues; that it is not an accident that we are seeing this focus. It is not as if the government officials woke up one day and suddenly became very righteous; that there is an economic necessity behind some of these actions.

But the tax haven controversy has highlighted a larger issue of the role of banks with respect to illicit financial flows. So my talk is about how tax havens may open the door for larger systemic reforms to deal with illicit financial flows across the board.

Now illicit financial flows, if you didn't know, come in three flavors. The first one are the proceeds of bribery and theft by government officials. When this is large-scale, when you are really stealing millions or billions it is referred to as grand corruption.

The second kind of illicit flows are the proceeds of criminal activities including drugs, drug trafficking and terrorist financing. The third category is the one I have already mentioned which are the proceeds of tax evasion.

Raymond Baker who is someone who runs a center called The Center for Global Financial Integrity, has dedicated his own research to eliminating all kinds of illicit financial flows. So he talks about how there are some key structures that comprise or allow these flows to continue.

The first are tax havens and he defines these as "...places where you can set up a non-functioning entity and then you can sell to this entity and it can sell to other entities. Then you can structure pricing in such a way that all or most of the profits are earned in the tax haven entity and you pay only minimal or no taxes on the profit."

He claims there are 72 tax havens around the world. Some of the tax havens intersect with what are called off-shore secrecy jurisdictions. Now the term off-shore is a bit of misnomer. Switzerland, last I could tell, is not off any shore. It is in the middle of Europe. But there are the traditional off-shore Caribbean islands that have made a lot of money by hiding other peoples.

But these are places where you can establish entities that are hidden behind what are called nominees and trustees such that no one knows whether you are the real owner or manager of either a bank account or of a particular company. And finally, there are these anonymous trust or bank accounts which are also hidden

behind these nominee owners and trustees so that no one knows who are the real donors or who is providing the money that is held in these accounts.

Now what is the size of the problem? If we talk about illicit financial flows as the whole basket, it is really hard to document illegal financial flows. Can you imagine? I mean economists really try to do that. Now Baker estimates that there is between \$1 to \$1.6 trillion a year of illicit money that moves across borders. Now that is a very sketchy number. But it is one of the ones that is out there.

Now of the \$1 to \$1.6 trillion of illicit money that supposedly moves yearly across borders, Baker further estimates that half of it, so between \$500 to \$800 billion a year come out of developing and transitional economies. These are countries that often have weak legal and administrative structures.

Now he compares this to foreign aid and foreign aid has been running about \$50 to \$80 billion a year in total through the 1990s and into the current decade. Not just foreign aid from the United States, we are talking about development loans and assistance. So you think about that. \$500 to \$800 billion of illicit money is coming out of the developing world and more money is coming in.

You think, "Wow. If that money could just stay where it came from, wouldn't a lot of people be better off?" So tax havens, at present, we've placed a greater emphasis on them and countries want their revenue.

In the past, governments have focused on terrorist financing which focuses on the blocking of assets and looking for terrorist organizations. What has been less the focus in terms of illicit financial flows is the issue of grand corruption and kleptocracy. But I believe that these types of illicit flows should not be ignored as they pose just as much a threat to our peace and security as do terrorist monies.

Now why should anyone care in this room? We are not the ones impacted directly by this. The first issue is that these leaders impoverish their countries, stealing aid and making their countries much more dependent on overseas assistance.

So first is just the empathy and understanding that there are certain people who don't live in democratic regimes who have their leaders steal from them daily. But on top of that, it leads to the fact that we, in countries that have more economic resources, have to continue to provide development assistance.

The second is the link between corruption and violence. Kleptocrats often use violence as a means of repressing their population which allows them to steal from their country with impunity. It also allows them to start and ferment violence in other parts of the world or in countries that are neighboring theirs.

Marcos, Ferdinand Marcos, Jean-Claude Duvalier of Haiti and Charles Taylor of

Liberia are examples of this phenomena. But you can just look at "Parade Magazine's" top 10 dictators. Does anyone ever see that on Sunday? To know that there are a few other bad guys on the list.

I hate to say this. I am not a sexist but they tend to be male.

[audience laughter]

So...if you have seen the movie "Blood Diamonds", Charles Taylor used the sale of diamonds. The sale of these beautiful stones to purchase weapons and finance the work of the Revolutionary United Front, a rebel group in Sierra Leone and was responsible for financing a very, very bloody civil war.

So here are some recent examples of kleptocracy and corruptions. So now my talk, I'm just going to tell you what these people do. What kind of things do they do, where do they put their money and why do I think it is bad.

The first is the Congo. Between February-there is a handout outside which has some pretty diagrams of shopping trips of one particular leader and some cars of another. So at some level it is a bit funny. But seriously, between February 2004 and August 2006, Denis Christel Sassou Nguesso, son of the president of the Republic of Congo went shopping, many times; mostly in Paris. But also in Hong Kong, Monaco, Dubai and Marbeya.

He spent hundreds of thousands of dollars on designer names including Lacroix, Gucci, Escada, Luis Vuitton, Christian Dior, and Roberto Cavalli. In addition to being the president's son, Mr. Sassou Nguesso is head of Co-Trade, a public agency which sells Congo's oil on behalf of the government.

His personal credit card bills along with any other Co-Trade official were paid off by off-shore companies registered in Anguilla which appeared to have received via other shell companies money related to Congo's oil sales.

Now oil accounts for around 80% of Congo's income and in 2006, oil revenues reached around \$3.00 billion. Now despite this, Congo remains one of the poorest and most indebted countries in the world and it's oil wealth has contributed to several bloody civil wars.

While the majority of the population remains mired in poverty, the president's family is able to live in luxury. Now Mr. Sassou Nguesso's credit card spending in just one month, in June 2005 came to \$32, 000.00. This could have paid for, according to "Global Witness", more than 80, 000 babies to be vaccinated against measles which is a major cause of child death in Congo.

Now the documentation which the anti-corruption organization Global Witness

referred to came into the public domain in mid-2007 through creditor litigation by a so-called Vulture Fund in Hong Kong. Vulture Funds are so described because they buy up distressed debt from poor countries and litigate to gain creditor judgments forcing repayment.

When Global Witness obtained the documents they published them on their website and they showed the payment chain all the way from oil revenues through different accounts to Mr. Sassou Nguesso's credit card shopping in Paris and elsewhere. So if the point is not clear, it is about the fact that state revenues were what was financing these shopping trips.

Now, Mr. Sassou Nguesso attempted to force Global Witness to take this evidence of his personal spending off its website and a U.K. high court judgment in August, 2007 dismissed this attempt saying, "It is an obvious possible inference that Sassou Nguesso's expenditure has been financed by secret personal profits made out of dealings in oil sold by Co-Trade." And the justices continue that the documents, unless explained frankly, suggest that Mr. Sassou Nguesso and his company were unsavory and corrupt and that the profits of Co-Trades oil sales should go to the people of the Congo, not to those who rule it or their families.

So to summarize, Global Witness tells us, "Here is a situation where a president's son, who is responsibly for marketing his countries oil is apparently using proceeds from government oil sales to pay for luxury personal expenditure to the tune of hundreds of thousands of dollars and has been described by an English judge as 'unsavory and corrupt'. Meanwhile, the majority of the population of Congo languishes in dire poverty."

He is not alone. We have Teodoro Obiang Ngueman Mbasogo. He came to power in 1979 in Equatorial Guinea and he is listed in "Parade's" list as the 14th worst dictator in the world. Most domestic and international observers consider his regime to be one of the most corrupt, ethnocentric, oppressive, and undemocratic states in the world. Populations live under a dollar per day in Equatorial Guinea.

In the early part of this decade, President Obiang and his government deposited up to \$700 million in the United States Riggs Bank. In a U.S. subcommittee investigation criticized Riggs in 2004 for failing to report potential money laundering in the Equatorial Guinea accounts. It also outlined examples of how Riggs allowed Obiang to make cash deposits and withdraw from accounts he controlled personally.

Riggs later agreed to pay a \$60 million fine to the U.S. government for failing to report these and other suspicious transactions.

Now Equatorial Guinea's embassy insists the money which was released back to the country belongs to the government. Now they may say it is the country's

money but the president does control everything says Arvind Ganesan, a good friend of mine and a director at Human Rights Watch who studied how the Equatorial Guinea government uses its oil revenue.

He tells us, "Under Obiang the country's wealth is basically a presidential ATM." That whatever is coming in Obiang can take out and spend. Now his son, a dictator in training, young Teodorin is under suspicion for the corrupt handling of government funds as well after purchasing a \$35 million Malibu mansion in 2006.

Now young Obiang, despite his paltry official salary of \$5, 000.00 a month paid cash for his 16-acre ocean front property complete with a private golf course and you can see the mansion on the web. "Forbes" ranked this house as the sixth most expensive home sale in 2006.

So although Equatorial Guinea earns \$3 billion in annual oil revenues, the country's riches don't reach the people. Again, most people there live in abject poverty surviving on about a dollar a day.

Two more dictators I'll mention and then I'll talk about how do they accomplish these things. It is not just about Africa.

Peru's ex-president, you may recall, Alberto Fujimori, was just sentenced last week to 25 years in prison for crimes against humanity. But he is set to take the stand again in May on corruption charges. Fujimori returns to the dock charged with funneling \$15 million to his top advisor, Vladimiro Montesano who is already charged and in prison on multiple corruption charges. Montesanos' assets had been siphoned out of the country.

Fortunately, Montesano, for some reason videotaped all of the situations in which he accepted bribes and kept a very detailed library which doesn't seem really smart. But that led to his conviction.

The last person I'll mention is Charles Taylor. Mr. Taylor started the Liberian war which lasted for about 14 years and is currently undergoing criminal trial for allegedly playing an important role in the 10 year war with Sierra Leone which killed several thousands and mutilated many others including the recruitment of child soldiers.

Now Taylor was transferred for trial in the Hague due to his influence in the region. So even though he is being tried by a Sierra Leone special court, a war crimes court, he is being kept in the Netherlands. He has denied all counts of war crimes and crimes against humanity.

But the big issue is that Charles Taylor is receiving legal aid. He claims that he is indigent and that he has no money. Now according to a recent U.N. expert's

report, "Although Mr. Taylor claims to be indigent, he has requested that the special court cover the cost of his trial, there are credible allegations of investments in Nigeria that remain unfrozen. The government of Nigeria has not permitted the U.N. to investigate these allegations. In addition, Liberia has not adopted legislation to freeze any Taylor assets in Liberia itself."

And you can understand the political sensitivity around doing that. So to quote the prosecutor, "We've certainly found evidence of hundred of millions of dollars taken by Charles Taylor illegally in various banks at different times. We have evidence of two accounts that were maintained in his name in the U.S. during his presidency. That was at Citibank and the sum of the two accounts over time totaled \$5 billion."

He has evidence that in one fell swoop \$375 million was debited from those accounts. Now Mr. Taylor denies all this and says if any of this money is found he is going to give it back to the Liberian people.

And actually, I lie. I have one more leader to just mention briefly and that is again, just to show you the geographic range of corruption is Pakistan. I think you all know who Asif Ali Zardari is which is the current leader of Pakistan.

In 2004, he went and participated in a hearing that was trying to prove that he was entitled to the proceeds of a wonderful mansion located in England that the Pakistani government asserted was bought by Benazir Bhutto and Zardari using corrupt funds that they had stole.

And just to give you a sense of Mr. Zardari, he was known as Mr. Ten Percent when he was actually the finance minister in Bhutto's government because he allegedly pocketed 10% as a kickback for any government transaction and moved it into an off-shore jurisdiction.

Now Bhutto and Zardari initially denied that they owned this mansion, this very expensive house and eventually did confess later that they were the beneficial owners; that there had been a disguised purchase. But if you look behind the shell company, in fact, they did own that.

But when they were first accused of this, Mr. Zardari said, "How can anyone think of buying a mansion in England when people in Pakistan don't even have a roof over their heads?" He asked and this is what he said in the press.

So there you have it. We have dictators living well and they are coming from different parts of the world and do we find money? Well, occasionally we do. Switzerland, after being criticized has really gone much further when it comes to dealing with corruption and so they have found funds from Mr. Montesano, from Marcos, from Sani Abacha of Nigeria, from Kazakhstan, from Raul Salinas of

Mexico.

And there are currently cases pending with respect to assets belonging to Devalue and Mobutu Sese Seko from the former Zaire which is now Congo.

So how do banks permit this? What is going on? Global Witness, the organization I mentioned before and they are really, really fascinating NGO, has recent and they are the ones that really exposed the whole problem of blood diamonds and brought that out into the public. They have a new report called "Undue Diligence: How Banks Do Business With Corrupt Regimes".

And they have great evidence, what they can find, showing these kinds of checks, credit card receipts and payments going into and out of accounts belonging to people such as the leaders of Equatorial Guinea and Congo.

So what's the problem? Now we have become aware of the failures by banks and the fact that they are in some part responsible for the global economy and the crisis we are having now in terms of just the general economic downturn. What is less known is that for much longer failures by banks and the governments that regulate them have caused significant harm to the economies of some of the poorest countries of the world.

And if we want to promote peace and stability, countries which receive finances, which are not just off-shore islands, but major financial centers, then we need to think about the message that they send by taking in the assets of corrupt or despotic leaders. By doing business with dubious customers and corrupt, natural resource rich states, banks are facilitating corruption and state looting which deny these countries the chance to lift themselves out of poverty and leave them dependent on aid.

So there are two issues which are how can we stop these flows? They are occurring. How do we know they are occurring? Because these leaders are able to move and siphon funds out of their countries and to take them out of treasury and to move them to other countries.

We found evidence, as evidenced by Switzerland itself, that money, once these leaders are deposed from office or die, is suddenly found.

Those assets are there. And those are only the assets we can find using forensic investigation. There's probably more. So how can we stop these flows? The first concept that I want to talk about, there's sort of two issues, one is stopping. And, I'm almost done. And the other is, if you can't stop, what do you do in order to find and to give back to the countries from which the money was stolen?

So, the concept that is being discussed today in banking circles is that of the

politically exposed person, the PEP. A politically exposed person is simply someone who holds a political office or a high office in a country. Being a PEP doesn't mean you're a bad person, right? We have some PEPs in this room. If you are a political official, you are politically exposed. You are vulnerable, possibly prone to corruption. But not necessarily.

But, a PEP also includes your wife, your husband, your relatives, your close business associates, right? Because when money laundering occurs, Charles Taylor is not going to do it just in his own name, although he actually did in numerous instances, but you're going to use your friends and your associates to help you set up shell companies or to move the money.

So, there's this universe of people called politically exposed persons, and there's been a lot of call for years to have heightened due diligence when a politically exposed person tries to open a bank account anywhere in the world.

Now, today this has been a very ineffectual system. There are few databases that are sold privately by commercial companies, which banks are supposed to use to screen customer accounts. But, if you look at the lists, they include people who are dog catchers. There's been really no verification that these lists work.

But even if they do, in terms of that, there's really nothing binding about banks actually having to go through this exercise. It's meant to just be risk assessment and prudent due diligence to know your customer.

We do have one set of voluntary principles that a group of large banks put together at a lovely castle a few years ago called the Wellsford Principles. They were developed by major banks, and again they're in those really exciting CLE packets for those of you that have them, as a way of creating enhanced due diligence.

They're voluntary, and to date they don't seem to be really used very much. So the leader of Congo that I mentioned earlier, the documents that global witnesses found showed that his account was screened for terrorism purposes, but there wasn't any heightened due diligence to figure out that in fact, he was the son of a head of state.

The concept of a politically exposed person exists in name, but in practice banks aren't really figuring out who their customers are. And the proof of that is simply because people who are very obvious political leaders or close associates are able to open bank accounts quite easily.

But the problem that is more serious is the problem of beneficial ownership. And the financial action task force, a group founded by OECD member countries of finance ministry officials, they're sort of bureaucrats that sit around and made 40

recommendations that are meant to help banks and governments stop money laundering and illicit flows.

They have recommendations that require countries to take measures to prevent the unlawful use of legal persons, companies, or trusts. And so countries are meant to ensure that there is adequate, accurate and timely information on the beneficial control and ownership of all of these legal persons or these business entities. That's really where the problem lies.

It doesn't matter who is a politically exposed person. What really matters is that many bank accounts that are opened in secrecy jurisdictions are opened in the name of shell companies or trusts that are registered by lawyers or other service providers. But there is no attempt to really look behind those shells to find out who are the people that are investing the money? Who are the natural persons who are opening these accounts?

So it's great to talk about PEPs, but really it is beneficial ownership. Banks really need to be required to engage in much more obligatory screening to know who the natural persons are behind their accounts. Many secrecy jurisdictions have thousands of companies registered in each office building, none of which consists of more than the legal documents and a lawyer or a company service provider's office.

The onus should be put on banks to demonstrate that they have established that the company opening an account is actually operating a genuine business, and find out who are the principles behind the company.

The last thing, and then I'm done and we can actually have a nice drink, is about asset return. So, there's much more that can be done to figure out who is opening a bank account. That's the first step, right? We should prevent the money from leaving the country and moving into the financial system in the first place.

But the other is asset return. In the area of international cooperation, we now have a wonderful convention called the United Nations Convention Against Corruption. It was adopted in 2005 and now has more than 140 signatories and 135 parties, and it has a whole chapter on asset recovery in case of corruption.

So we need to make sure in the decade ahead that all countries who have signed this convention orderly implement and follow their obligations to pursue this convention. This is where there's a really big problem.

My time at the World Bank this fall really helped me understand that when a victim country seeks to recover corrupt funds from wherever they think they're housed, mutual legal assistance is still one of the largest stumbling blocks, which is that investigators in one country have to cooperate and seek assistance from

major financial centers.

It's not just about lack of capacity in the victim countries. Of course, there is a question of lack of resources and more than that, often problems of political will, because investigating and proving that a former leader or a sitting leader is corrupt is something that is very sensitive and very difficult to do.

But what I discovered was that many of the major financial centers themselves are not well organized and are not responsive to the requests that are coming from the victim countries. So I am going to conclude my talk by saying that what I left, my experience at the World Bank really showed me that the onus is on the developed world and the countries benefiting from these flows to really step up and to engage in technical assistance to make sure the monies go back.

The biggest problem, I don't want to sort of throw up my hands, but I am just going to end with that is, where do you try a corrupt official, right? At the end of the day, in order to deal with the issue of kleptocrats, kleptocrats are people who take advantage of their leadership of a country or of a political unit to basically steal from the people, is where do you try them?

If they happen to have engaged in violence, like Charles Taylor, well then you have an international tribunal that can deal with them, the international criminal court. But if someone is purely stealing, where do you go?

It is so difficult to prove and to try these individuals in their own countries. Again, it is up to those major financial centers to think about the ways in which they can use their own money laundering laws and other laws to hold these individuals accountable. That's the much more difficult and political question and one that my research has been focusing on, or will focus on in the years to come.

So, I hope you have learned a little bit about the fact that there are some really bad people out there. And thank you very much for coming today.

[applause]

**Male Voice:**

Thank you, Anita. And thanks one and all for being here and participating in this really grand moment for our entire community. Join us for refreshments down, go down the end of the L to the Brick and Schoolie room, and linger, visit, and once again thanks for coming. Our final installation of this year will be on May 14th. Professor Veronica Taylor is to be installed as the Dan Fin O'Henderson Professor of Law. Please rejoin us on that occasion. Thanks.

[applause]

[End of recorded material]