



**International Association  
for Asset Recovery**

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# **“Asset Recovery -- The Neglected Art of Fraud and Financial Crime”**

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## **Asset Recovery -- The Neglected Art of Fraud and Financial Crime**

If the investigation is thorough and diligent, any criminal can be caught. If the prosecution is tough and professional, any criminal can be convicted and imprisoned. But today, with some 97 percent of crime financially driven, if you don't also track down and take back the assets that the criminal stole, you—along with your client, agency, company, or law firm—might just as well have lost the case.

In the glare of the global financial crisis, record-breaking frauds that would likely have gone undetected for years have been brought to light. If not for the financial sector meltdown, would anyone have suspected Bernard L. Madoff, the former NASDAQ chief, of operating the biggest Ponzi scheme in history? Wouldn't Allen R. Stanford, once a trusted financier, likely still be scamming upwards of \$7 billion from investors?

But while they and other fraud artists sit in prison today, the cases against them are far from closed. There is still the matter of restoring the billions they stole to the rightful owners.

The hunger for justice and the need for restitution have spawned an unprecedented demand for information and training in the public and private sectors—among law enforcement agents and prosecutors, as well as the thousands of independent practitioners whose jobs it is to recover the proceeds of crime and fraud. Some career paths that once promised little more than a cubicle and a computer—forensic accountants, digital investigators, information analysts—are today at the vanguard of the most innovative asset recovery efforts.

## **The International Association for Asset Recovery (IAAR)**

The International Association for Asset Recovery (IAAR) is a membership organization of professionals who work to recover assets derived from illegal activity or unjustly withheld from their rightful owners. Founded in 2008 as the Association of Certified Asset Forfeiture Specialists, its mission is to enhance the capabilities and standards of professionals and agencies worldwide in the battle to win back assets that belong to governments, companies, organizations, or individuals victimized by criminal or wrongful conduct.

Taking back ill-gotten gains from wrongdoers and using them to make restitution to victims or to strengthen the arm of law enforcement is a powerful way to keep the public safe, battle corruption, and cripple cross-border criminal enterprises. Tracing and recovering the assets of individuals who have been deprived of their property also serves the cause of justice. Officials estimate that less than 3 percent of the money stolen through fraud is ever recovered.

IAAR is committed to promoting and advancing the legal, effective, and ethical use of asset recovery in both the public and private sectors. Used properly, asset recovery can have a devastating effect on illicit activity by denying wrongdoers the fruits of their misdeeds.

### **The public and private sectors**

When asset recovery practitioners from both government and business come together to pursue common goals the synergies they create are often enough to take back ill-gotten gains.

In these times of tightened resources, fostering close cooperation between public and private sector professionals who seek to vindicate the rights of victims is a must. The prosecutor working in the asset forfeiture field and the private attorney specializing in asset recovery have very much the same goals. Likewise, the officer running an asset forfeiture unit and the corporate investigator tracking down intellectual property thefts face similar challenges.

These professionals have in common a need for high-quality training and guidance on best practices. They need to keep abreast of innovative approaches and new technologies that will improve their chances of success. They need

trustworthy news, intelligence and information about cutting-edge developments, and they need opportunities to meet and consult with the leaders in their field from around the world.

By bringing together not just law enforcement professionals specializing in asset forfeiture and recovery, but also this private sector professionals focused asset recovery, IAAR aims to unify the field and enable all sides to develop a transnational network of experts that will create new resources and opportunities for the entire profession.

Governments around the world have already begun to embrace this synergistic model. In the United States, the White House Office of Management and Budget has worked with private investigators to help stamp out waste and fraud in mortgage lending and health care. Across the African continent, non-governmental organizations like the International Center for Asset Recovery (ICAR) have stepped in to help public entities combat corruption and repatriate funds to fuel struggling economies and aid impoverished citizens. Throughout Europe and Asia, fraudsters whose actions once went unpunished have seen their empires dismantled through the combined efforts of private attorneys and public prosecutors—a new team dynamic that has made hiding assets less possible and tracing assets more certain than ever.

### **The Certified Specialist in Asset Recovery (CSAR) examination**

Suppose you are already a seasoned, asset recovery professional. You can track a stream of cash from New York to Nepal and back. You can walk into a courtroom in London with documents from Hong Kong and get a freezing order served in Switzerland. You can run a spreadsheet with 5,000 transactions and pick out the one fraudulent needle in the haystack.

You specialize in locating and recovering the proceeds of fraud, corruption and other crimes, which makes you a champion who has spent a career trying to make victims whole and take riches back from those who hold them wrongfully. How do you make it known that you have these extraordinary skills? How do you ensure that your expertise is recognized?

To answer those questions, IAAR has created a unique program to issue credentials to professionals in the field who have demonstrated that they are

fully qualified experts—based on their performance on a pioneering new test, the Certified Specialist in Asset Recovery examination.

### **How the CSAR certification exam was developed**

To advance the training and manifest the expertise of professionals who work in the asset tracing and recovery field worldwide, IAAR undertook a months-long effort with a top psychometrics firm and dozens of experts to build a rigorous, reliable, and legally defensible certification exam.

The result is the world's first psychometrically sound certification test for asset recovery professionals.

The exam, which was introduced in November 2010, is a test of asset tracing and recovery know-how, aptitude and expertise.

CSAR takes its place alongside the respected credentials issued by other illustrious organizations, such as those of the Association of Certified Fraud Examiners (ACFE), Association of Certified Anti-Money Laundering Specialists (ACAMS), Institute of Internal Auditors (IIA), and National Association of Legal Investigators (NALI).

IAAR began in early 2010 to take careful steps to ensure that the CSAR exam meets the highest levels of professionalism and psychometric soundness supervised by IAAR's own professional staff, which has years of experience creating and managing professional certification programs.

The result of this effort is a landmark development in the world of asset recovery that establishes criteria of professionalism with which to distinguish the best.

### **The asset recovery community**

The four principal members of most asset recovery teams in both the public and private sectors—investigators, forensic accountants, lawyers, and investigative analysts—share common tools and objectives, face similar frustrations and obstacles, and can benefit much from training and advancement opportunities that IAAR provides.

The fight to ensure that crime does not pay won't be won easily. The skills professionals like you must acquire and refine to achieve this goal can't be learned overnight. We challenge you to stand at the vanguard of asset recovery practitioners.

## Speaker Biography



**Charles A. Intriago**, founder and president of the International Association for Asset Recovery (IAAR) and AssetRecoveryWatch.com, the former federal prosecutor launched Money Laundering Alert in 1989 and later moneylaundering.com. In 2001, he founded the Association of Certified Anti-Money Laundering Specialists (ACAMS), the leading international credentialing organization in the field. His companies hosted the most widely attended anti-money laundering conferences in the world. Previously, he was chief counsel of an investigative subcommittee of the U.S. House of Representatives that oversaw the Justice and Treasury departments, the Federal Reserve, FBI, IRS, DEA and other agencies with asset tracing and recovery operations. He also was an Assistant U.S. Attorney in Miami, where he prosecuted corrupt public officials, fraudsters and drug traffickers. As Special Counsel on Organized Crime to the Governor of Florida he wrote the Statewide Grand Jury Law. Born in Ecuador and fluent in Spanish, he later was an equity partner of the international law firm, McDermott, Will and Emery.

# The Miami Herald

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## U.S. fails to follow all of the money

By Charles A. Intriago  
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**T**he U.S. case against Swiss banking giant UBS over the 52,000 U.S. depositors whom UBS lured with a promise to keep their money hidden from tax authorities was settled last week. Unfortunately, the agreement leaves justice poorly served and sends exactly the wrong message to the next generation of con artists and fraudsters who prey on rich and poor throughout the world.

In exchange for some meager disclosures, the Justice Department has for the most part relinquished its right to pursue some 90 percent of the 52,000 U.S. account holders who paid UBS handsomely over the years for learned counsel on how to evade U.S. taxes. The Swiss government, which was a party to the deal and is supposed to ensure that Swiss banks uphold the country's fraud-and-corruption-friendly bank secrecy laws, graciously allowed UBS to provide that much and no more.

It's ironic that the same Justice Department that signed off on the agreements is now building major fraud and public corruption cases that may well involve some of the same UBS account holders that the bank will now be able to keep hidden.

### Tax evasion a felony

Does anyone really believe that all 52,000 account holders were all otherwise law-abiding doctors, business people and lawyers who just prefer not to pay taxes (although, let's remember, tax evasion is a felony in this country)?

Isn't it reasonable to assume that at least 10 percent of them were hiding the proceeds of crimes, that one in 10 are concealing money from Ponzi schemes, mortgage fraud, embezzlement, public corruption, drug trafficking, insurance fraud and dozens of other lucrative crimes?

If 10 percent of the 52,000 U.S. account holders entrusted \$5 million each in criminal proceeds to UBS, some \$26 billion in dirty money was in those accounts. And the total is probably much higher.

I may be jaded from my experience as a federal prosecutor, but I think 10 percent is far less than the real number, and \$5 million is well below the typical account minimum at a white-glove private banking outfit like the one at UBS.

Don't forget, criminal proceeds don't belong to the account holders, or to UBS, or to the Swiss government. They belong to the

victims of the crimes that generated the money or to the U.S. government in the form of assets recovered under forfeiture laws.

Does UBS want us to believe that it would not stoop to accepting criminal proceeds? Is it telling us that its scruples kicked in when it came to examining the sources of funds it was eagerly welcoming from U.S. depositors? This is the same bank that has a long history of maintaining accounts for some of the world's worst despots and corrupt political leaders.

In fact, if UBS knowingly or through "willful blindness" accepted criminal proceeds, its officers, directors and employees can start worrying about prosecution for the crime of money laundering, one of the most serious felonies in the United States.

It's puzzling that the Justice Department never filed even a civil case against UBS under the federal money laundering law, as it did against American Express Bank International in 1994, several Mexican banks in 1998 and others more recently. Such a suit would at least have imposed noncriminal sanctions while obtaining disclosure of the account holders through grand jury subpoenas and other remedies the USA Patriot Act provides.

In the wake of the agreements, other questions remain:

- How many other financial institutions in Switzerland and the other 60 or so secrecy havens that dot the globe are doing the same thing as UBS -- making money by instructing Americans on how to hide income from the IRS?
- Where else did UBS seek customers with the same tax-evasion pitch?

### Swiss government's role

One of the more shocking parts of this lawlessness is that the Swiss government was the active partner of UBS in negotiating what amounts to a plea agreement and resisting U.S. efforts to obtain disclosure.

Now we will all have to live with the consequences of an agreement that confers new legitimacy on what is little more than a haven for funds whose origin nobody now will be able to determine.

The 60 secrecy havens that dot the globe will applaud the Swiss and UBS for helping to preserve their "private banking" gravy trains that strip our public treasuries and abuse those of us who pay our taxes.

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*Charles A. Intriago, a former federal prosecutor, is president of the International Association for Asset Recovery and AssetRecoveryWatch.com. He also founded Money Laundering Alert, in 1989, and the Association of Certified Anti-Money Laundering Specialists (ACAMS).*

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## Fund Government With Dirty Money

By Charles A. Intrigo and  
Robert A. Butterworth

FEDERAL prosecutors last week persuaded a judge to stop a group of Bernard L. Madoff's victims from using an involuntary bankruptcy filing to claim more than \$100 million of his personal assets. The prosecutors' argument was simple: preserving Mr. Madoff's assets for eventual forfeiture to the government is the best way to ensure as much money as possible is returned to the victims of his Ponzi scheme in an equitable manner.

Most people would assume that this is business as usual, that the government routinely seizes the assets of criminals and returns them to victims. After all, criminals should not have ill-gotten houses, cars and yachts waiting for them when they finish their sentences. But the reality is that the government's focus on seizing Mr. Madoff's assets for restitution is unusual. Lawbreakers are rarely forced to give up the proceeds of their crimes.

To take just one example: Between stints in prison over the past decade, John A. Gotti, the former Gambino crime family boss, was able to return to his luxurious house in Oyster Bay Cove, on Long Island, where the median house value in 2007 was more than \$2 million. Does anyone believe the money that Mr. Gotti bought it with was legitimately earned?

Every year in the United States, criminals amass hundreds of billions of dollars in cash and goods from illegal activities — mortgage fraud, extortion, embezzlement, illegal gambling, bank fraud, public corruption, human trafficking, identity theft, securities violations, insurance fraud, intellectual property piracy and bankruptcy fraud —

though it's impossible to gauge the total take precisely. Drug trafficking alone brings in an estimated \$18 billion to \$64 billion a year, while estimates of Medicare fraud earnings are \$35 billion to more than \$70 billion a year. The part of that loot that is seized by federal, state and local governments amounts to a few billion dollars at most. Here again, it is difficult to assess the exact value because so many different government entities are involved in collecting it, and no one agency adds it all up.

### Why should criminals keep ill-gotten gains?

Even when criminals are behind bars, their profits gather interest in bank and securities accounts, or are held in real estate, cars, aircraft, yachts, art, jewelry, racehorses and countless other assets. If they were routinely seized, it would bring in tens of billions to compensate victims or finance law enforcement, break the backs of criminal organizations and deter future crimes.

The problem is not that the government lacks the authority to confiscate criminal assets. The very first Congress, in 1789, authorized the federal government to seize criminal assets — as a way of taking illegal goods away from smugglers. Today, some 200 federal criminal and drug control laws include provisions for asset forfeiture. And the 50 states and the District of Columbia all have forfeiture provisions of their own.

The problem is that governments — national, state and local — fail to exercise this power fully. Eric Holder, the attorney general, has already expressed his support for doing so. Back in 1999, when he was the deputy attorney general, he told the Senate Judiciary Committee, "From telemarketing to terrorism to counterfeiting to violation of the food and drug laws, the remedy of asset forfeiture should be applied."

Now Mr. Holder is in a position to order that all federal law enforcement

agents and prosecutors be trained to pursue the financial aspects of every case from the start, with an eye toward forfeiture of the criminal's assets. Modern asset forfeiture laws rest on the notion that it is not enough to incarcerate people involved in criminal activity. Equal attention must be given to attacking and dismantling the economic base of the criminal organization.

For this to happen, the Department of Justice has to overcome a culture in which prosecutors focus on the arrest and conviction of individuals to the exclusion of the broader targets, entire criminal organizations. Congress must also close a gaping hole in the victim restitution laws, which provide no authority for the pretrial restraint of assets of those accused of orchestrating frauds. Too often, dirty money simply disappears into shell companies and impenetrable offshore havens before the trial even begins.

But upon a showing that fraud was probably committed, a prosecutor should be authorized to restrain all of the suspect's assets; the question of who gets them would be resolved after the criminal justice system has finished its work. The British already do not differentiate between asset forfeiture and restitution. They merge the two concepts and call it asset recovery. We should borrow a page from them.

The Justice Department must also make sure that its state and local counterparts in law enforcement get the training and resources to manage asset forfeitures of their own.

For too long government has been unwilling to take back the wealth that criminals have stolen from taxpayers. We can no longer afford to ignore the opportunities offered by our under-enforced asset forfeiture laws. □

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