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W. Michael Hoffman
Center for Business Ethics



Raytheon Lectureship in Business Ethics

American Business Needs an International Anti-Corruption Court

Honorable Mark L. Wolf

Chair of Integrity Initiatives International and
Senior Judge of the U.S. District Court for Massachusetts

April 1, 2019



BENTLEY UNIVERSITY is a leader in business education. Centered on education and research in business and related professions, Bentley blends the breadth and technological strength of a university with the values and student focus of a small college. Our undergraduate curriculum combines business study with a strong foundation in the arts and sciences. A broad array of offerings at the Graduate School of Business emphasize the impact of technology on business practice. They include MBA and Master of Science programs, PhD programs in accountancy and business and selected executive programs. The university is located in Waltham, Mass., minutes west of Boston. It enrolls approximately 4,200 full-time and 140 part-time undergraduate students and 1,400 graduate and 40 doctoral students.

On July 25th, 2016, the CENTER FOR BUSINESS ETHICS at Bentley University was renamed the W. MICHAEL HOFFMAN CENTER FOR BUSINESS ETHICS in honor of the pioneering work and four decades of accomplishments of the center's founder and current executive director, W. Michael Hoffman. The center is a nonprofit educational and consulting organization whose vision is a world in which all businesses contribute positively to society through their ethically sound and responsible operations. The center's mission is to provide leadership in the creation of organizational cultures that align effective business performance with ethical business conduct. It endeavors to do so by applying expertise, research, and education and taking a collaborative approach to disseminating best practices. With a vast network of

practitioners and scholars and an extensive multimedia library, the center offers an international forum for benchmarking and research in business ethics.

Through educational programs such as the Raytheon Lectureship in Business Ethics, the center is helping to educate a new generation of business leaders who understand from the start of their careers the importance of ethics in developing strong business and organizational cultures.

To the extent that people think about business ethics, they usually equate it with efforts to oppose business corruption. In reality, business ethics is concerned not only with opposing unethical business practices, but bringing out what is best in business. Nevertheless, opposing corruption remains vitally important to business ethics. How important? Well, consider the following.

Recently, the United Nations estimated that annually, about \$3.6 trillion is lost to corruption. If corruption were a country, its economy would be the fifth-largest in the world, slightly behind that of Germany, or about the same size as the economies of India and Indonesia combined. India and Indonesia are the second and fourth most populous countries on earth, and together comprise more than one-fifth of the world's population. Their combined economies support over 1.6 billion people! With corruption on that scale, one would expect that governments could easily identify the culprits and throw them all in jail. However, here's the problem: it is hard to put in jail the people who, as it were, "own" the jails because they are running the government. Government leaders in corrupt countries get away with it because no one has the power to hold them to account.

That sheds light on why the topic of this monograph and its author are so important. Throughout his career, the speaker, U.S. Federal Judge Mark Wolf, has developed a reputation for taking on powerful interests. Then, in 2016, Judge Wolf, along with Justice Richard Goldstone of South Africa, and other colleagues, formed Integrity Initiatives International to combat "grand corruption," which is also known as "kleptocracy." They are advocating a variety of means to support this aim, but their primary goal is to establish an International Anti-Corruption Court (IACC).

With a problem of this magnitude, solutions will not be simple or quick. However, given the interdependence of today's global economy and the magnitude of the problem, we can ill afford to permit grand corruption to continue with impunity. The more effective we become in uprooting corruption, the more people everywhere will experience the benefits of ethically managed businesses. In the following pages, Judge Wolf lays out the arguments for the creation of an IACC, and the steps needed to make it happen. We look forward to the day when we will see his vision turned into an institutional reality.



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(FROM LEFT) Prof. Jeffrey Moriarty, Interim Director, Hoffman Center for Business Ethics and Professor and Chair, Department of Philosophy, Bentley University, the Honorable Mark L. Wolf, and Ms. Dawn-Marie Driscoll, Executive Fellow, Hoffman Center for Business Ethics



Thomas A. Kennedy, PhD

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Raytheon believes in a values-based ethics program, and we believe in the value of ethics education. We invest in ethics and provide employees with robust, award-winning ethics education to reinforce how important doing the right thing in business is to our success. We talk about ethics so our employees know it is okay to ask questions and raise concerns, to take an “ethics check,” if you will. By supporting this process, we build upon a strong ethical foundation and reinforce a culture of integrity at the company. A strong ethical culture requires work. We believe that working at ethics pays dividends and that it gives us a competitive advantage.

Raytheon’s support for the Hoffman Center for Business Ethics at Bentley University has a long history. The center has provided leadership in this important field for the academic and business communities extending now for two generations. Bentley is increasingly recognized for promoting ethical business practices and cultures not just in the United States, but internationally as well. This is especially significant as our world is increasingly interdependent, and having ethical business partners is a global imperative.

The Raytheon Lectureship in Business Ethics at Bentley has added relevance in this environment. Having respected corporate leaders share their insights and commitment to business ethics helps show the way for all of us. Promoting further dialogue and discussion about ethical business practices enlightens and inspires us to redouble our own commitment. Raytheon is proud to partner with Bentley and the Hoffman Center for Business Ethics to give voice to ethical excellence in business.

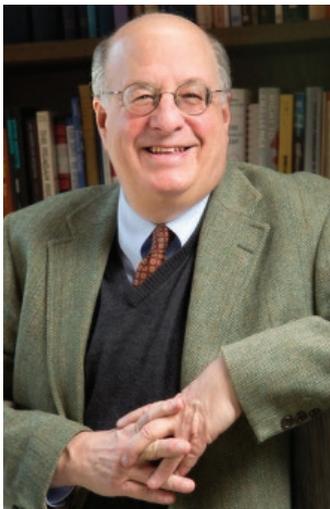
In 2016, United States District Judge Mark L. Wolf with Justice Richard Goldstone of South Africa and other colleagues formed Integrity Initiatives International (III) to combat grand corruption, which is also known as “kleptocracy” – the abuse of public office for private gain by a nation’s leaders.

According to III, grand corruption is not a victimless crime. When corrupt governments siphon off resources that should be devoted to the health and education of their citizens, they are creating the conditions that force people to flee their countries resulting in the deaths of countless refugees and forcing massive social strains on the countries who receive them. Grand corruption is destabilizing many nations and, in the process, creating grave dangers for international peace and security.

III’s proposal for the creation of an International Anti-Corruption Court (IACC), similar to but separate from the International Criminal Court, has generated significant support from major human rights organizations and leaders from around the world including the former United Nations High Commissioner for Human Rights, Human Rights Watch, Nobel Peace Prize laureate, President Juan Manuel Santos of Colombia, and the current administrations in Colombia and Peru.



The Hon. Mark L. Wolf delivers the Raytheon Lectureship in Business Ethics to students, faculty, staff, and friends at Bentley University.



The Hon. Mark L. Wolf

Chair of Integrity Initiatives International
and Senior Judge of the U.S. District
Court for Massachusetts

The Hon. Mark Wolf is the Chair of Integrity Initiatives International (III) and Senior Judge in the United States District Court for Massachusetts. He was previously Chief Judge of the U.S District Court for Massachusetts. Earlier in his career, he served as a Special Assistant to the Attorney General of the United States after the Watergate crisis and then as the Deputy United States Attorney for the District of Massachusetts.

In 1984, he received the Attorney General's Distinguished Service Award for exceptional success in prosecuting public corruption in Massachusetts.

A graduate of Yale College and Harvard Law School, Judge Wolf is an Adjunct Lecturer in Public Policy at the Kennedy School at Harvard, where he teaches a seminar on combatting international corruption. He is also a Senior Fellow of Harvard's Carr Center for Human Rights, and a member of the Council on Foreign Relations.

He has been very involved in supporting various community initiatives. For example, he is the founder and chair of the John William Ward Public Service Fellowship for Boston Latin School students. He is also the founder and past Chair of the Judge David S. Nelson Fellowship, which introduces inner-city high school students to the law and the courts. In addition, Judge Wolf is the Chairman Emeritus of the Albert Schweitzer Fellowship, which provides public service Fellowships for health and professional students.

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When I was introduced to Dr. Michael Hoffman, the founder of the Hoffman Center for Business Ethics, he informed me that he founded this center following the political crisis known as “Watergate,” which led to the resignation of President Richard Nixon. I worked for the Attorney General of the United States in the aftermath of Watergate. Dr. Hoffman informed me that Watergate inspired him to try to set up a center dedicated to business ethics. He and I were on parallel tracks, even in the mid-1970s. Watergate is used to describe a wide range of illegal activities by the highest officials in the United States government. One of the precipitating factors of Watergate was the fact that American businesses, which had a history of bribing foreign officials abroad, were making illegal campaign contributions to President Nixon’s reelection campaign. In return, Nixon’s Department of Justice,

headed by his campaign manager John Mitchell, would not investigate and prosecute those businesses for their evidently criminal conduct.

It was this corrupt symbiotic relationship that led to the enactment of the Foreign Corrupt Practices Act not long after Watergate in the 1970s. As some of you, but perhaps not all of you, know, the FCPA, as the act is known, makes it illegal for U.S. businesses and executives to pay bribes to foreign officials.

Michael Hoffman founded this center to teach business students about moral, ethical, and lawful leadership. It is sad, but obviously true, that this education is needed at least as much now as it ever has been since the Watergate era. This center is, among other things, not only a monument to Michael Hoffman’s vision, but also his foresight.

In preparing to speak at the Hoffman Center, I could not help but think of something said by perhaps the most famous and most eloquent Supreme Court Justice in American history, Oliver Wendell Holmes. He wrote in a comparable context: “One is almost ashamed to praise a dead master for what he did in a field where he was acknowledged to be supreme. When his work is finished, it is too late for praise to give the encouragement, which all need, and of which the successful get too little. Still, there is a pleasure in bearing one’s testimony even at that late time, and thus in justifying the imagination of posthumous power on which all idealists and men not seeking the immediate rewards of success must live.”

I think that your presence here today is evidence of Michael Hoffman’s posthumous power. I hope that the talk I will give will contribute to ensuring him the vibrant living legacy that he deserves.

I am also happy to have this rare opportunity to speak to students who are going to be the future victims of grand corruption if it is not much more effectively punished and deterred by the stronger enforcement of criminal laws against corrupt national leaders, who are now commonly called “kleptocrats.” You are being educated to be business leaders, and you probably foresee yourselves as being powerful and influential. I doubt that it has occurred to any of you, or the business leaders that I sometimes talk to, that you are also victims of corruption. I was a prosecutor of corrupt public officials in Massachusetts after I worked for the Attorney General of the United States. That is how I became a judge in 1985, nominated by President Reagan and confirmed by the Senate.

However, one of the things that was always challenging in prosecuting

corruption in the United States — and is certainly true about international corruption — is the grave misperception that it is a victimless crime. The most obvious victims of corruption, particularly grand corruption, are people who are poor and powerless. By definition, they are not going to be able to pay a bribe to distort decisions to be made in their favor, and they are victimized because they are deprived of high-quality effective services that honest, able companies would provide if they could successfully compete for business. This has been a feature of the history of Massachusetts.

In the 1970s, a special commission was established to investigate corruption in the state building contracting process. It was headed by the President of Amherst College, John William Ward. The Ward Commission found that corruption was a way of life in the awarding of contracts for buildings in colleges and universities, among other venues. Today, we are still living with the horrendous consequences of that corruption. Bribes were paid to build the garage at the University of Massachusetts Boston, which at the time, was entirely a commuter school. People wanted to get an education. They were people like my father when he went to Bentley at night to become a CPA. Many of them would drive after work to attend class. However, that garage was defective from the day it opened. It closed ten years ago because it was recognized to be so dangerous that it could no longer be used. Now, it is the source of the \$70 million debt that UMass Boston had to incur to destroy the garage and replace it. This has put the school in fragile financial circumstances. That is an example of the way poor people around the world are victimized by corruption.

U.S. businesses are also victimized. That is less obvious. However, in my experience, big multinational businesses

in the United States and the people who lead them are generally ethical. About seven years ago, I was staying with the United States ambassador in Prague. We had dinner with the CEO of Westinghouse, Danny Roderick. Westinghouse was competing in essence with the Russian Federation to get a contract to build all the nuclear power plants in the Czech Republic. If they got that contract, it was foreseeable that they would get the contracts essentially for all of Central and Eastern Europe. It was a very valuable business opportunity. The people who were going to award the contract had relationships with the Russians from the Communist days. There was the fear that bribes would be paid and the bidding process would not be fair. So, with support from the United States, they devised a very transparent system for this competition with milestones. By the time I met Mr. Roderick, Westinghouse was way ahead by all the objective criteria. However, he said, “I really want this business and we really need it, but I am not going to pay a bribe to get this business. If that is what it comes down to, we are just going to have to take a pass on it.” He said he had been taught that by Brackett Denniston, who was in the United States Attorney’s Office in Boston with me and had become the General Counsel of General Electric. In the end, Westinghouse, which remained far ahead on the scorecard, did not get the contract because the Czech Republic decided not to award it to anyone.

If American businesses are not honest, they have another reason not to pay bribes, which is the Foreign Corrupt Practices Act. There are now 40 countries that have counterparts to the FCPA under the OECD Convention Against Bribery. They have adopted similar statutes that make it illegal for a French business, for example, to pay a bribe to a foreign

official. However, only two of those 40 countries have ever enforced their version of the FCPA. The United States has the vast majority of the prosecutions, and in the last couple of years, the United Kingdom has begun enforcing its act.

American businesses now are at a grave disadvantage. They do not want to pay bribes, and if they are tempted to do it, they are among the very few businesses who face the threat of being prosecuted and punished, including with jail sentences, for bribing foreign officials. As a result, honest contractors, and other honest businesses, will not compete for work in areas that are very corrupt, particularly where it is necessary to pay high officials to get business. They lose the opportunity to make money and do fulfilling work that is desperately needed by people in countries that need high-quality work. As a result, the poor and the powerless suffer because it is often the businesses that pay bribes that get the contracts. Then, in situations such as the University of Massachusetts Boston garage, if they do any work for the contracts at all, it is shoddy and defective.

I had this discussion two years ago in Oxford, England with Jim Kim, who was then the president of the World Bank. He very proudly talked about what the World Bank had done in 2014, to put together very quickly a coalition to get money to fight Ebola in Africa. He said: “But, you know, there are limits to what international development banks can do. We need businesses to come in and work to do more to complement what public organizations are doing.” We were acquainted with each other, and I said to him: “Jim, that was really a terrific talk, but you know better than I do that one-third of the money that went to Sierra Leone for Ebola could not be accounted for, except for the fraction they found in the bank accounts of the people running

the program. And American businesses cannot go into Africa,” which is what he was focused on, “because they cannot do business without paying bribes. They do not want to pay bribes, and they certainly do not want to go to prison.” He said, “Sadly, you are right.”

This dynamic is going to become much more pronounced because right now China is offering massive amounts of money to build roads and other infrastructure in Africa. They are not going to be concerned about corruption. However, American businesses that could build better roads more cost-effectively are not going to pay bribes, and consequently, the United States will lose influence. As a result, I say, and now many others say, it is essential to diminish the demand for bribes by corrupt national leaders by strengthening the enforcement of existing criminal laws, particularly by creating an International Anti-Corruption Court.

In 2014, I published two articles. One was a Brookings Institution article, and

the other, published on the same day, was a *Washington Post* op-ed piece. Both advocated the creation of an International Anti-Corruption Court. I have published other articles, and usually, they evaporate pretty quickly. However, in this case, I started hearing from people from all over the world. I was asked to speak about the court at the World Economic Forum in Geneva (not Davos) at the Partnering Against Corruption Initiative and in the United States Congress.

In 2016, Justice Richard Goldstone, who was appointed by Nelson Mandela to the Constitutional Court of South Africa, and who was the first chief prosecutor for the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, other colleagues, and I formed Integrity Initiatives International. “Triple I,” as we call it, was founded to do a range of things to strengthen the enforcement of criminal laws against kleptocrats and, particularly, to advocate for the creation of the International Anti-Corruption Court. This



There has been strong support for the creation of an International Anti-Corruption Court in Latin America. Pictured above, Judge Wolf meets with allies in this effort, El Salvador Foreign Minister Tonnocco and former Colombian Foreign Minister Trujillo, at a conference in Cali, Colombia.

idea has since been gaining momentum at an accelerating rate. In January 2019, the government of Colombia in Latin America called on the United Nations to create the International Anti-Corruption Court and to convene a special session to discuss creating this court, among other things. That session will be held in 2021. In late March 2019, I got a call from the foreign minister of Colombia asking, “When can I come and visit you in Boston?” He is coming next week. So, I appreciate this opportunity to explain to future leaders, and also future potential victims of grand corruption, why U.S. business needs an International Anti-Corruption Court, and to encourage you to join the fast-growing movement to create that court.

The economic costs of corruption, particularly grand corruption, are great. It is estimated that trillions of dollars are paid in bribes every year and that the cost of all forms of corruption is more than five percent of global GDP. Developing regions lose ten times more to corruption than they get in foreign aid. Illicit outflows of funds — funds that developing countries desperately need — total more than \$1 trillion per year.

The cost of corruption is not limited to poorer countries. In 2011, the third-largest outflow of illicit capital in the world — that is, the proceeds of corruption — came from Russia. The World Bank estimates that 42 percent of Russia’s GDP is lost to its corrupt shadow economy. When the Panama Papers were published a couple of years ago, they provided much more detailed information on why many people think that Vladimir Putin is the richest man in the world. They wrote about \$2 billion being moved by people very close to Putin, \$200 million at a time in some instances, and they were moved through international banks.

One thing is fundamental about

kleptocrats. If they are stealing their country’s natural resources or taking enormous bribes in connection with the performance of their official duties, they generally do not want to keep that money in their country. They want to have homes in London, in Paris, in New York, in Palm Springs. The money has to be laundered to do that. Therefore, it will go through Swiss banks or other banks to try to hide the true owners and the sources of that enormous wealth. In Putin’s case, one of his childhood friends is an excellent cellist. This man said sanctions excluding him from the United States should not be imposed because he is not wealthy. However, the Panama Papers show that he had the equivalent of about \$15 million in his name in a Swiss bank and he owned four percent of a Russian media company valued at \$11 billion. The cellist was probably telling the truth. He is not a rich man, but I expect that he lent his name to his friend Vladimir Putin. A couple of years ago the Prime Minister of Russia, Dmitry Medvedev, took issue with some things I said about corruption at a luncheon with him in St. Petersburg. Russia then ran out of money to invite me to come back. However, he appears to be worth \$1 billion, and he has vast estates in Tuscany and yachts, again, outside the country.

My brilliant former classmate and friend, Michael Mandelbaum, is one of the leading foreign policy scholars in the country. He recently published an article in *The American Interest* about how three corrupt regimes, Russia, China, and Iran, instigate many dangerous activities — dangerous to international peace and security — because it helps them gain the support of their citizens who abhor corruption but are very nationalistic. The corrupt leaders claim that their country is beleaguered by foreign enemies like the United States, appealing to nationalistic

people who would otherwise revolt because of their massive corruption.

Grand corruption has other devastating consequences that are, in my view, probably even more important than the enormous economic consequences. Terrorism is a major problem in the world, obviously. The constituents for terrorist organizations like Boko Haram in Nigeria and the Taliban in Afghanistan are not primarily religious fanatics. However, these organizations have positioned themselves as the prime opponents of the corrupt leaders in their nation's capital. People support these terrorist organizations because they are trying to remove the corrupt leaders.

Grand corruption is also closely associated with the worst abuses of human rights. In 2013, Navi Pillay, the United Nations High Commissioner for Human Rights, wrote: "Corruption Kills. The money stolen through corruption every year is enough to feed the world's hungry 80 times over. Corruption denies them their right to food and, in some cases, their right to life." Earlier, I told you about Sierra Leone. A lot of money poured into Sierra Leone very quickly when the Ebola crisis broke out, and one-third of it could not be accounted for.

Angola is rich in oil and other natural resources. José Eduardo dos Santos was the President from 1979 until 2017. His daughter, Isabel dos Santos, when she was 30 years old, was deemed the richest woman in Africa. She was believed to be worth \$3 billion. Her father had made her the head of the state oil company, among other things. For her 30th birthday, she flew her friends in from around the world and gave them champagne that cost \$1,000 a bottle. Yet, among all the countries in the world, Angola has the highest percentage of children who do not live to the age of five. It is not because

they don't have the resources to provide medical care. It's because the people who have led that country have sought and held office to enrich themselves rather than to serve their citizens.

Importantly, when President dos Santos left office in 2017, one of his last acts was to give immunity from prosecution to his friends, his family, and himself. It showed he was worried that if he no longer held office, they would be prosecuted and punished. I think that is a vivid example of why an International Anti-Corruption Court would have the genuine capacity to deter corrupt conduct by creating the credible threat that these kleptocrats will be prosecuted and punished. Corruption is a crime of calculation. It is not like some war crimes where, in the heat of battle, somebody does something intolerable. It is a crime of calculation.

I see this in people that I sentence in fraud cases. Consciously or subconsciously, they calculate: "It is worth it to break the law to make money because I will not get caught. If I do get caught, I will not be prosecuted. If I am prosecuted, I will not be punished." It is very important to change that calculation.

Grand corruption is destabilizing many countries and in the process creating grave threats to international peace and security. People, particularly young people, went to Tahrir Square in Egypt. They toppled Hosni Mubarak, the president, who was a very important ally to the United States. Corruption was a main motive for the uprisings. As a result, the United States lost a valuable though corrupt ally.

As an even more graphic example, indignation at corruption caused people, especially young people, to go to Maidan Square about five years ago in Kyiv, Ukraine. They drove out the corrupt leader, Viktor Yanukovich. He fled to

Russia. Soon after, Russia invaded Crimea. The United States and the European Union had to sanction Russia. This complicates the ability of the United States and the European Union to work with Russia on issues that are very important to international peace and security, including issues relating to Syria and Iran.

III generally, and me in particular, were working very closely with some of the leaders of that Euromaidan Revolution of Dignity, as it is called in Ukraine. We have been helping them establish a national anti-corruption court. Those people,

young people for the most part, who literally risked their lives to topple a corrupt leader, are among the most ardent supporters of the International Anti-Corruption Court.

In any event, John Kerry, who was the Secretary of State at the time, was certainly correct when he said, “The quality of governance is no longer just a domestic concern.”

It is important to recognize that grand corruption does not thrive in many countries because of a lack of laws. One hundred and eighty-six countries are parties to the United Nations Convention



After Ukraine’s Revolution of Dignity, an effort began to root out corruption. Judge Wolf, seen here at Maidan Square, the heart of the revolution, has been working with officials to establish an Anti-Corruption Court in Ukraine.

Against Corruption (UNCAC). UNCAC requires that signatories have laws making bribery, extortion, money laundering, obstruction of justice, and misappropriation of national resources a crime. Under UNCAC and other treaties, the signatories have an international obligation to enforce those laws, including against their nation's leaders. However, they do not because those corrupt leaders control the police, the prosecutors, and the courts. They will not permit honest, effective investigation, prosecution, or punishment of their friends, their families, or themselves.

Two of the most prominent FCPA prosecutions involved Siemens in 2008 and Daimler in 2010. Both are German companies, but they are on the U.S. Stock Exchange, so they can be prosecuted under the FCPA. They each pled guilty. Siemens paid a \$900 million fine. They both agreed to cooperate in foreign prosecutions. Under the FCPA, businesses and business people who pay bribes to foreign officials can be prosecuted, but the officials demanding the bribes cannot be prosecuted.

The package of Siemens evidence was sent to Russia. Siemens identified twelve Russian officials to whom it had paid millions of dollars, and pledged to testify and cooperate in other ways in their prosecution. At first, Russia did not acknowledge this prosecution package existed. However, a young anti-corruption activist, Alexei Navalny, publicized it. President Medvedev said, "Oh, yes, we are going to take this very seriously." Well, now it's 2019. No Russian official has been prosecuted for taking money from Siemens.

In 2002, the evils of genocide and war crimes prompted the international community to create the International Criminal Court to prosecute the worst

abuses of human rights. My colleagues and I say that the comparable consequences of grand corruption now justify the creation of an International Anti-Corruption Court to enforce existing criminal laws against corrupt leaders if their countries are unwilling or unable to do that themselves.

This is a court that would be staffed with excellent investigators. It is very complicated to try to follow the money as it goes from country to country and shell corporation to shell corporation. However, institutions are developing to do this. There is an International Anti-Corruption Coordination Center in London that has FBI agents, their counterparts in the United Kingdom, Canada, Singapore, Australia, and Germans and Swiss as well investigators working together to follow the flow of illicit funds.

They are developing evidence for prosecutable cases and discussing what the best venue for prosecution would be. As the example I cited earlier from the Panama Papers shows, if they develop even more evidence that Vladimir Putin is corrupt, nothing is going to happen if that evidence is turned over to Russia. However, if Switzerland joined the International Anti-Corruption Court, Putin could be prosecuted there for money laundering in Switzerland if the Swiss were unable or unwilling to prosecute him themselves.

The International Anti-Corruption Court would also be staffed by highly experienced international prosecutors who are adept at making and presenting complex financial cases, and with experienced international judges who are capable of managing those cases.

The International Anti-Corruption Court would also give foreign countries an incentive to improve the enforcement of domestic criminal laws against their

corrupt leaders so they do not get hauled to the International Anti-Corruption Court. We saw this with the International Criminal Court relatively recently. Juan Manuel Santos, the President of Colombia (who won the Nobel Peace Prize and who is a big supporter of the International Anti-Corruption Court), and the FARC rebels negotiated an end a 50-year Civil War in Colombia. As part of their agreement, sanctions could be imposed on each side. They had a first draft of the agreement, and both sides said that they wanted stronger potential sanctions because they needed to show the International Criminal Court that Colombia was taking this seriously, that prosecutions in Colombia would not be shams and, therefore, the ICC should defer to what was being done in Colombia, and not prosecute Colombians in the Hague.

The International Anti-Corruption Court would have authority to prosecute a head of state or a head of government, anyone that leader appoints, and anybody who conspires with him or her to engage in corrupt conduct. That would include individuals and companies that paid bribes. It would include the bankers and lawyers who knowingly made the money laundering possible.

The International Anti-Corruption Court would address the demand side of corruption. This would greatly diminish the dilemma that honest businesses, particularly American businesses, find themselves in. It would level the playing field. The Chinese could be prosecuted the way Americans can be prosecuted in the United States. It would fill a crucial gap in the international system because there is now nothing that provides a credible threat that corrupt leaders will go to prison if they take bribes or misappropriate the enormous wealth of their countries. This would give, again,

American businesses and business people the opportunity to make money and to do truly fulfilling work.

The concept of the International Anti-Corruption Court has garnered support around the world. Supporters include President Santos of Colombia, Salil Shetty, who recently stepped down as the Secretary General of Amnesty International, José Ugaz, who until recently was the chair of the board of Transparency International (TI) and the chapters of TI from Chile to Mongolia. Supporters of the IACC also include Global Witness, Human Rights Watch, and, most significantly, from my perspective, courageous young people from around the world, like the young leaders of the Ukraine Revolution of Dignity.

Moreover, we are also beginning to attract support from the business community. There is a wonderful organization called TRACE, which represents many multinational corporations in helping them assure that they meet their international compliance obligations. For example, if you are a multinational corporation that wants to hire somebody in Nigeria, you have a responsibility to make sure that person is not going to pay bribes to get you business. TRACE does the vetting. They will give honest businesses the reasonable assurances they need that they are dealing with honest, reputable people in remote parts of the world and they can try to do business there without exposing themselves to great risk. They came to Integrity Initiatives International and said, "We want to give you \$50,000 for the next six months to get better organized to take this concept of the International Anti-Corruption Court from a concept to a coalition to a formal campaign." That is what we are doing now.

This is a concept that has excited a lot



While naysayers disparage the International Anti-Corruption Court as impossible, Nelson Mandela reminds us that great things “seem impossible until they’re done.” In this spirit, Judge Wolf meets with Mandela Scholars at Bridgewater State University in Massachusetts.

of gratifying interest around the world. We are trying to make it more of an international coalition of individuals, organizations, and countries that will shape this campaign to create the court in connection with the special session of the United Nations on corruption, in 2021 or in another way.

The most common criticism of the International Anti-Corruption Court is that it is an impossible ideal. However, there are ways to induce countries that might be reluctant to join the court. Joining the court could be a requirement for membership in the World Trade Organization, or membership in UNCAC. It could be a requirement for getting the World Bank and other development bank loans. It could be a condition for getting bilateral aid from the United States and other countries, and it could be integrated into trade treaties, like the Trans-Pacific Partnership that has some pretty strong anti-corruption provisions.

In any event, in my lifetime, I have seen things that were regarded as impossible happen. I have seen the collapse of Communism, and I have seen the end of

apartheid in South Africa. Nelson Mandela used to say, “It always seems impossible until it’s done.” From Parkland, Florida to Kyiv, Ukraine, young people are making the impossible happen.

Integrity Initiatives International is like a barbell. We have people like Justice Goldstone, Geoff Cowan, who was the head of Voice of America, and me on one end. We also have many fabulous young people. Four of them are here with me. [Judge Wolf asks his colleagues to stand.] These are my law clerks Eric Mortensen, and Paul Strauch, who are quite expert in international criminal law. Bethany Adam is the chief of staff of III, and Julia Makayova from Belarus is my special assistant.

It is my hope that you as Bentley students will join these young people from around the world in making the International Anti-Corruption Court a reality. I think that to the extent you do, you will be paying tribute to Mike Hoffman, as well extending the tradition that he established and exemplified that makes Bentley such a special place.

Q&A

Below are edited highlights of the Hon. Mark L. Wolf's question-and-answer session with Bentley University students, faculty, staff, and guests.

QUESTION: *What are the main differences between the International Anti-Corruption Court and the International Criminal Court? What would happen if a case overlaps in both Courts' jurisdictions?*

JUDGE WOLF: I did not get into why we advocate for establishing an International Anti-Corruption Court that would be similar to, but separate from the International Criminal Court (ICC). The question you raised could also apply to the federal system that exists in the United States. There is much criminal activity that could be prosecuted in either Federal Court or State Court, and there are communications and coordination between the two. In deciding if a case would go before a federal or state court, there is some kind of joint decision making, but there are different laws that they enforce.

The worst abusers of human rights are also among the most corrupt people in the world. If you are corrupt and want to stay in office, you cannot allow a free press. You cannot allow an independent

judiciary. In my view, and the view of many others, it is hard to make a money laundering case. However, it is, much easier than making a genocide case or war crimes case against a high official because the victims will not have evidence that the leader ordered the war crimes or genocide.

In the United States, we have in our history a famous Mafioso, Al Capone, who in the 1930s was the most notorious criminal in the United States. He went to prison, but he did not go to prison for any of the many murders he was undoubtedly responsible for. He went to prison for tax evasion. One way to remove and imprison the worst offenders of human rights is to convict them of crimes of corruption. While that would require communication and coordination with the ICC, that would not be difficult.

QUESTION: *You talked about the benefits of establishing an International Anti-Corruption Court, but where would it derive its authority to enforce these decisions?*

JUDGE WOLF: The court would have to

be created by a treaty. It would derive its authority from the countries that join the court. This brings into sharper contrast the main criticism. Creating this court is logical, but why would countries led by kleptocrats sign up? Why do I think the Government of Colombia is now ardently urging the United Nations to create an International Anti-Corruption Court? Because good government is good politics. Throughout Latin America, there is tremendous indignation regarding corruption, particularly including grand corruption. Brazil has successfully prosecuted the biggest corruption cases in the history of the world. They relate to bribes paid by an international construction firm called Odebrecht to officials throughout Latin America and as far away as Angola.

The current president of Columbia, Iván Duque Márquez, has had several domestic anti-corruption initiatives that have not progressed. I think that by taking the lead in advocating for the International Anti-Corruption Court, President Duque and his administration are trying to show that they are serious about corruption. I think there are a number of countries that would join the court. I do not expect that initially every country would. I think the United States, sadly, would not. But if there's a sufficient critical mass, the court would be created, and then I think there would be a lot of pressure for other countries to join.

QUESTION: *How would enforcement be managed? You're talking about corrupt people who move their money to other countries and banks. If there are judgments against them, will banks cooperate by freezing their money?*

JUDGE WOLF: Definitely. There are means to freeze money now in connection with domestic cases. The Court would be able to do that. I think the biggest enforcement issue is how to get the defendants before the Court. You see this now with the International Criminal Court. Several years ago, the President of Sudan, Omar al-Bashir, was indicted and charged in the International Criminal Court, and he's still President of Sudan.⁵ If President Bashir enters the jurisdiction of any country that has joined the ICC, that country is obliged to arrest him and turn him over to the Court. Therefore, he has been under a kind of counterpart to house arrest. He has not been traveling much. If he has money or homes in Paris, or London, or New York, he has not been enjoying them.

Bashir went to a meeting of the leaders of African States in South Africa. He thought he had diplomatic immunity and could not be arrested. However, a case was brought before the Constitutional Court of South Africa asserting that the country's obligation to seize him and turn him over to the International Criminal Court was superior to any immunity he has as a head of state.

The Constitutional Court of South Africa issued an order prohibiting Bashir from leaving South Africa until it decided the relative priorities of those legal obligations. However, the President of South Africa at that time, Jacob Zuma, who has been charged with corruption himself, helped his friend Bashir sneak out in the middle of the night.

On one hand, it is frustrating that Bashir is still not before the ICC. But,

⁵On April 11, 2019, ten days after, Judge Wolf gave this talk, President Bashir was removed from his position as president by the Sudanese Armed Forces following months of popular protests. On December 14, 2019, he was sentenced to two years in detention.

on the other hand, he is not enjoying himself, and I think this should send a message of deterrence to other people. I can't wait until these nuanced issues, which are serious, are the main issues we're talking about.

The courts in the United States do not have any means to enforce court orders. I issue orders to the FBI or the Department of Homeland Security and they follow them, but it was not always that way. The seminal case about judicial review and the power of American courts to issue orders even to the President is Marbury v Madison, decided in 1804.

The night before John Adams was leaving office to be replaced by Thomas Jefferson, he signed many commissions to fill the judiciary with Federalist judges, people from Adams' party. The one for Mr. Marbury was not delivered. Thomas Jefferson found it when he moved into the White House. Marbury said that he wanted his commission, as it was needed to start working as a Judge in the District of Columbia. Jefferson refused, so Marbury filed a lawsuit. The Chief Justice was the very famous John Marshall. He issued a very politically adept decision for the Supreme Court. He said, "We have the power to order the President to deliver the commission, but this case has been brought to the wrong court so we are dismissing it."

He did that because Jefferson did not participate in the case. He knew Jefferson would not obey an order to deliver the commission to Marbury and the American people would support Jefferson. He had just been elected, and the United States had just revolted against its unelected King. About 30 years later, Marshall issued another order relating to Native Americans. Andrew Jackson did not like it. He said, "Chief Justice

Marshall has issued his order. Now let's see him enforce it." It was never enforced.

Then we go forward to the period that was formative for Michael Hoffman and for me. It was 1974. The Supreme Court ordered Richard Nixon to turn over the tapes he secretly made in the Oval Office. The President knew they included incriminating evidence, but he complied because he knew that after that long period, the people in the United States supported their courts, and they would not let anybody, including the President of the United States, defy an order from the Supreme Court. So he turned over the tapes and resigned.

I do not think it would take 175 years to develop that kind of culture internationally if we had an International Anti-Corruption Court, but a lot of this is cultural. It would develop, but not instantly, much like it did not develop instantly in the US.

QUESTION: *Do you think the International Anti-Corruption Court would need new legislation [to codify] some legal concepts? In the EU when they started trying to harmonize some legal [concepts across the member countries], they found that they needed to create new concepts that were binding for all the EU countries. For example, the meaning of a contract varied among countries.*

JUDGE WOLF: In my view, it would not require additional legislation. I told you 186 countries are parties to the UN Convention Against Corruption. Almost all of them, as required, have laws that make extortion and bribery illegal.

The International Anti-Corruption Court would be a forum to enforce those laws if the countries would not enforce them against their nation's leaders. There could be some differences in the way different countries interpret certain laws. We have

cases in Federal Court based on diversity of citizenship. Sometimes, I have to apply California law and sometimes North Carolina law. That is my general sense of how the International Anti-Corruption Court would work.

QUESTION: *You mentioned the Panama Papers. I'm sure you know that Daphne Galizia, the main journalist responsible for making them public, was killed for her bravery. How would you advise people who want to fight against corruption but are scared of retaliation?*

JUDGE WOLF: The Panama Papers were made public by really hard-working, courageous journalists in many countries. Ms. Galizia was one of them, as was Frederik Obermaier. We are working with the International Consortium for Investigative Journalists to address exactly this issue, among others.

Ms. Galizia was a journalist in Malta. She was exposing a lot of corruption in Malta, which has become a money-laundering capital, and her car was blown up. When I say we have wonderful young people working with us, they include her sons, Paul and Matthew. While they are preoccupied with proceedings relating to their mother's death, they are supportive of the International Anti-Corruption Court.

This is a tremendous problem. How do you provide protection for whistleblowers? Some of it is political. There was just an election in March in Slovakia, where a leading journalist investigating corruption was murdered. The party that had been in power for a long time was replaced by a new President who is an utter amateur. This happened because people have long been indignant about corruption. They have been frustrated by their inability to do

anything, but they just did something at the polls because it was believed that the previous president had some complicity in the murder of the Slovak journalist. It does take considerable courage in many countries, and journalists are at very high risk. Journalists do not just get fired for exposing corruption, they get killed. It happened in Malta. It happened in Slovakia. It happens in an unfortunate number of places. If there were an International Anti-Corruption Court, and if a corrupt leader was responsible for these murders and the motive was to cover up money laundering, bribes, or extortion, there would be a place to prosecute. However, methods to get at these effectively do not exist right now.

QUESTION: *How would the Court be paid for? I assume the signatory countries would all contribute, but I wonder if contributions would be proportional to the GNP of the country.*

JUDGE WOLF: The International Criminal Court costs about \$160 million a year. People say, "Oh, an IACC would be very expensive." However, if we deter just a small amount of corruption, it would be very cost-effective on a cost-benefit analysis. Initially, I think the international community would have to come up with some money. Very few people know this, but when I impose a fine in one of my cases, which I regularly do, particularly in white-collar cases, a portion of that goes to fund the United States courts. I think that, if substantial grand corruption cases were successfully prosecuted in the IACC, part of the penalty would be a fine, and part of the fine or even all of the fine could be used to finance the court.

Thank you very much.





Following his talk, Judge Mark Wolf met informally with Bentley University students to discuss the topic of his speech.



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