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Following the Money: Lessons from the Panama Papers, Part 1: Tip of the Iceberg

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Following the Money: Lessons from the Panama Papers

Part 1: Tip of the Iceberg

Lawrence J. Trautman*

ABSTRACT

Widely known as the “Panama Papers,” the world’s largest whistleblower case to date consists of 11.5 million documents and involves a year-long effort by the International Consortium of Investigative Journalists to expose a global pattern of crime and corruption where millions of documents capture heads of state, criminals, and celebrities using secret hideaways in tax havens. Involving the scrutiny of over 400 journalists worldwide, these documents reveal the offshore holdings of at least hundreds of politicians and public officials in over 200 countries.

Since these disclosures became public, national security implications already include abrupt regime change and probable future political instability. It appears likely that important revelations obtained from these data will continue to be forthcoming for years to come. Presented here is Part 1 of what may ultimately constitute numerous-installment coverage of this important inquiry into the illicit wealth derived from bribery, corruption, and tax evasion. This article proceeds as follows. First, disclosures regarding the treasure trove of documents

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from the Panama-based law firm Mossack Fonseca are reviewed. Second is a discussion of the impact and cost of bribery and corruption to the global community. Third, I define and briefly explore issues surrounding “tax evasion.” Fourth, the impact of social media and technological change on transparency is discussed. Next, a few thoughts about implications for future research are offered.

Keywords: bribery, capital flows, corruption, criminal enforcement, data breach, developing countries, ethics, FCPA, FIFA, journalism, money laundering, Mossack Fonseca, national security, offshore accounts, Panama papers, scandals, social media, tax compliance, tax evasion, terrorist financing, transparency, wealthy tax non-filers.

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I. OVERVIEW

Here, in the United States, there are loopholes that only wealthy individuals and powerful corporations have access to. They have access to offshore accounts, and they are gaming the system. Middle-class families are not in the same position to do this. In fact, a lot of these loopholes come at the expense of middle-class families, because that lost revenue has to come from somewhere. Alternatively, it means that we’re not investing as much as we should in schools, in making college more affordable, in putting people back to work rebuilding our roads, our bridges, our infrastructure, creating more opportunities for our children.

President Barack Obama
April 5, 2016¹

Widely known as the “Panama Papers,” the world’s largest whistleblower case to date consists of 11.5 million documents and involves a year-long effort by the International Consortium of Investigative Journalists to expose a “global array of crime and corruption [where] [m]illions of documents show heads of state, criminals and celebrities using secret hideaways in tax havens.”² Involving the scrutiny of over 400 journalists worldwide, these “files

1. Press Release, Barack Obama, President, Remarks by the President on the Economy, (Apr. 5, 2016), <https://www.whitehouse.gov/the-press-office/2016/04/05/remarks-president-economy-0>.

2. Bastian Obermayer et al., *Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption*, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 3, 2016), <https://panamapapers.icij.org/20160403-panama-papers-global-overview.html>.

reveal the offshore holdings of 140 politicians and public officials . . . includ[ing] the prime ministers of Iceland and Pakistan, the president of Ukraine, and the King of Saudi Arabia . . . More than 214,000 offshore entities appear in the leak, connected to people in more than 200 countries and territories.”³

Since these disclosures became public, national security implications already include abrupt regime change and probable future political instability. It appears highly likely that important revelations obtained from these data will continue to be forthcoming for years to come. Presented here is Part 1 of what may ultimately constitute numerous-installment coverage of this important inquiry into the illicit wealth derived from bribery, corruption, and tax evasion. This article proceeds as follows. First, disclosures regarding the treasure trove of documents from the Panama-based law firm Mossack Fonseca are reviewed. Second is a discussion of the impact and cost of bribery and corruption to the global community. Third, I define and explore issues surrounding “tax evasion.” Fourth, the impact of social media and technological change on transparency is discussed. Next, a few thoughts about implications for future research are offered. This modest paper adds to the scholarship about bribery, corruption, money laundering, tax evasion, terrorist finance, and increased transparency by reviewing information provided by the Panama Papers to date; and explores resulting implications for world poverty and global political instability.

II. INITIAL DISCLOSURES

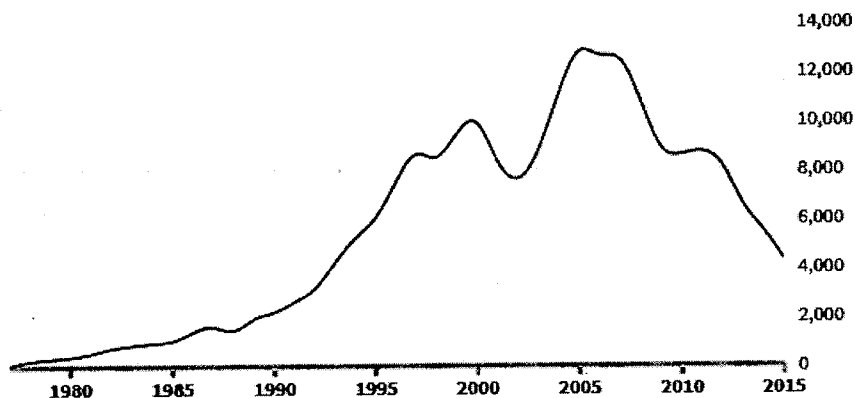
Perhaps the largest whistleblower case ever, the “Panama Papers,” at 11.5 million records, is the single largest ever disclosure of intended-secret documents, and “shows how a global industry of law firms and big banks sells financial secrecy to politicians, fraudsters, and drug traffickers as well as billionaires, celebrities and sports stars.”⁴ Exhibit 1 depicts the nearly 40 years of data leaked from Panama-based law firm

3. *Id.*

4. *Id.* See also CRYPTOME, (Feb. 16, 2016), <https://cryptome.org/2013/11/snowden-tally.htm> (noting Greenwald’s claim on 13 Sept. 2014 of having ‘hundreds of thousands’ of documents); Thomas Fox-Brewster, *From Encrypted Drives to Amazon’s Cloud—The Amazing Flight of the Panama Papers*, FORBES (Apr. 5, 2016, 8:50 AM), <https://www.forbes.com/sites/thomasbrewster/2016/04/05/panama-papers-amazon-encryption-epic-leak/#1eaa39c63a34> (observing 2.6 terabytes of data for the Panama Papers, contrasted with: Wikileaks Cablegate at 1.7GB, Ashley Madison 30GB, and SONY Pictures at an estimated 230GB); Andy Greenberg, *How Reporters Pulled Off the Panama Papers, The Biggest Leak in History*, WIRED (Apr. 4, 2016, 9:17 AM), <https://www.wired.com/2016/04/reporters-pulled-off-panama-papers-biggest-leak-whistleblower-history/>.

Mossack Fonseca, including information from 21 offshore jurisdictions about 210,000 companies.⁵

Exhibit 1
214,000+ Offshore Companies Incorporated Since 1977
By Mossack Fonseca



Source: The Panama Papers⁶
 International Consortium of Investigative Journalists

“The Panama Papers implicate a wide range of firms, politicians, and other individuals around the globe to have used secret offshore vehicles. Allegations include tax evasion, financing corruption, money laundering, violation of sanctions, and hiding other activities.”⁷ The ten most popular tax havens disclosed by the Panama Papers are shown by Exhibit 2, revealing that about half (130,000+) of the legal entities were incorporated in the British Virgin Islands, with Panama the second most favorite venue.⁸

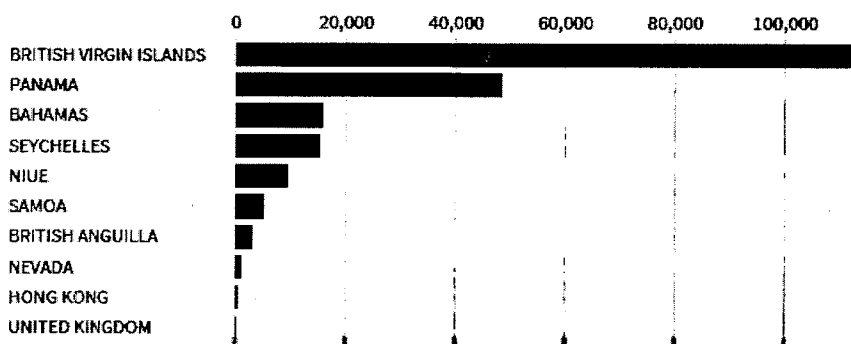
5. See Rigoberto Carvajal et al., *Explore The Panama Papers Key Figures*, THE INT’L CONSORTIUM OF INTERNATIONAL JOURNALISTS, <https://panamapapers.icij.org/graphs/> (last visited Feb. 26, 2017).

6. See *id.*

7. James O’Donovan, Hannes Wagner & Stefan Zeume, *The Value of Offshore Secrets—Evidence from the Panama Papers*, (Apr. 19, 2016) (unpublished paper), <http://www.valuwalk.com/2016/05/value-offshore-secrets-panama-papers/> (finding the data leak erased an unprecedented risk-adjusted US\$230 billion in market capitalization among 1,105 firms with exposure to the revelations of the Panama Papers).

8. See Carvajal et al., *supra* note 5.

Exhibit 2
The Ten Most Popular Tax Havens in the Panama Papers



Source: The Panama Papers⁹
 International Consortium of Investigative Journalists

A. Bombshell: The Initial Disclosures

The April 2016 release of stories based on the Panama Papers “exposes the offshore holdings of 12 current and former world leaders and . . . provides details of the hidden financial dealings of 128 more politicians and public officials around the world.”¹⁰ Some of these first stories appearing most significant include revelations about: the Prime Minister of Iceland, Sigmundur David Gunnlaugsson; Former Great Britain Prime Minister David Cameron; President Mauricio Macri of Argentina; high-ranking Chinese government officials; and Russian President Vladimir V. Putin.¹¹

1. Prime Minister of Iceland, Sigmundur David Gunnlaugsson

Repercussions from release of the Panama Papers appeared immediate in the case of the Prime Minister of Iceland, Sigmundur David Gunnlaugsson. “Confronted by demands for his resignation after documents revealing that he and his wealthy wife had set up a company in the British Virgin Islands led to accusations of a conflict of interest,”¹²

9. See *id.*

10. See Obermayer et al., *supra* note 2.

11. See Liam Stack, *What Are the Panama Papers?*, N.Y. TIMES, Apr. 4, 2016, http://www.nytimes.com/2016/04/05/world/panama-papers-explainer.html?_r=0.

12. Steven Erlanger, Stephen Castle & Rick Gladstone, *Iceland's Prime Minister Steps Down Amid Panama Papers Scandal*, N.Y. TIMES, Apr. 5, 2016, <http://www.nytimes.com/2016/04/06/world/europe/panama-papers-iceland.html?action=click&contentCollection=World&Module=RelatedCoverage®ion+Ma>.

Prime Minister Gunnlaugsson resigned just hours after the news story was published. According to news accounts derived from the leaked documents, the company set-up with his wife, “Wintris, Inc., lost millions of dollars as a result of the 2008 financial crash, which crippled Iceland, and the company is claiming about \$4.2 million from three failed Icelandic banks. As prime minister since 2013, Mr. Gunnlaugsson was involved in reaching a deal for the banks’ claimants”¹³

2. United Kingdom Prime Minister David Cameron

British Prime Minister David Cameron¹⁴ “faced calls for a government inquiry and accusations of bald hypocrisy by championing financial transparency—when the leaks showed that his family held undisclosed wealth in tax havens offshore.”¹⁵ Jeremy Corbyn, leader of Britain’s opposition Labour Party, “called for an independent investigation into the tax affairs of all Britons linked to the Panama revelations—including Mr. Cameron’s family—and for Britain to impose direct rule on its overseas territories and dependencies, if necessary, to get them to comply with British tax law.”¹⁶ In his January 2013 speech before the World Economic Forum in Davos, Switzerland, Prime Minister Cameron stated that he was committed to “driv[ing] a more serious debate on tax evasion and tax avoidance After years of abuse people across the planet are rightly calling for more action, and most importantly there is gathering political will to actually do something about it.”¹⁷ Following release of the Panama Papers, in an attempt “belatedly to try to defuse a furor over his finances,” *The New York Times* reported that Prime Minister Cameron admitted “that he had made a mess of responding to questions about his inheritance from his father, who had an investment company offshore . . . [and released] . . . his tax returns for the past six years.”¹⁸ News source *Time* reported that

13. *Id.* See also Lawrence J. Trautman, Personal Ethics & the U.S. Financial Collapse of 2007–08, (unpublished manuscript), <http://ssrn.com/abstract=2502124>.

14. Prime Minister Cameron resigned from that position in June 2016, unrelated to the Panama Papers. See Dan Balz & Karla Adam, *For David Cameron, a quick departure after a stunning defeat*, WASH. POST, June 24, 2016, https://www.washingtonpost.com/politics/for-david-cameron-a-quick-departure-after-a-stunning-defeat/2016/06/24/8d5ff592-3a04-11e6-9ccd-d6005beac8b3_story.html?utm_term=.21dc12bb448b

15. Erlanger et al., *supra* note 12.

16. *Id.*

17. Rt. Hon. David Cameron, Prime Minister, U.K., Address Before the World Economic Forum, Davos, Switzerland (Jan. 24, 2013), <https://www.gov.uk/government/speeches/prime-minister-david-camersons-speech-to-the-world-economic-forum-in-davos>.

18. Steven Erlanger, *David Cameron Releases Tax Data After Panama Papers Uproar*, N.Y. TIMES, Apr. 10, 2016, <http://www.nytimes.com/2016/04/11/world/>

“[t]he revelation that Cameron’s own family had benefited from a similar loophole not only makes him seem like a hypocrite, it also contributes to a sense that he and his governing Conservative Party live in a different world to ordinary British taxpayers.”¹⁹ Transparency International reported that “[t]he release of the Panama Papers has confirmed the UK’s role as a safe haven for corrupt individuals and their stolen wealth.”²⁰ Rachel Davies, Head of UK Advocacy and Research, Transparency International UK, said:

Last year, the Prime Minister made a personal commitment to end the UK’s role as safe haven for corrupt funds. Now is the real test of how serious that rhetoric is. . . . If corrupt individuals are allowed to continue to buy up luxury property and enjoy life in the UK, then the Government risks its credibility in leading efforts to tackle corruption on the global stage.²¹

3. President Mauricio Macri of Argentina

One of the first world leaders to be caught up in an appearance of impropriety was Argentine President Mauricio Macri, listed in a report by *La Nacion* to have served as a director from 1998 until 2009 of Bahamas offshore company Fleg Trading.²² At issue, according to early reports citing Prosecutor Federico Delgado, is whether Mr. Macri had failed to disclose his role as a director “with malicious intent” “in his 2007 financial declaration, when he became mayor of Buenos Aires, or in his 2015 declaration when he became president.”²³ In response, Mr. Macri’s office is reported to have issued a statement confirming “that a business group owned by the president’s family had set up an offshore company But . . . because he had never received any income from it there had been no reason to mention it in the financial declarations. Mr. Macri campaigned on a promise to combat corruption.”²⁴ These

europa/david-cameron-panama-papers-tax-return.html. See also Matt Vasilogambros, *David Cameron Answers for the Panama Papers*, ATLANTIC (Apr. 11, 2016), <http://www.theatlantic.com/international/archive/2016/04/david-cameron-panama-papers/477726/>.

19. Dan Stewart, *Why the Panama Papers Are Bad News for David Cameron*, TIME.COM (Apr. 8, 2016), <http://time.com/4286316/panama-papers-david-cameron/>.

20. Press Release, Transparency International, *Panama Papers Expose UK Role in Global Corruption: Recommendations to End UK Role as a Safe Haven for Corrupt Money* (Apr. 7, 2016), https://www.transparency.org/news/pressrelease/panama_papers_expose_uk_role_in_global_corruption.

21. *Id.*

22. See *Panama Papers: Argentina President Macri To Go Before Judge*, BBC NEWS (Apr. 8, 2016), <http://www.bbc.com/news/world-latin-america-35991155>.

23. *Id.*

24. *Id.*

allegations came on the heels of a widening investigation in Argentina about money laundering “that has gripped Argentina since 2013, when Jorge Lanata, an influential broadcast journalist, first revealed allegations of a scheme that involved Lázaro Báez, a construction baron in Patagonia who had ties to Mrs. [former president] Kirchner and her late husband and predecessor, Néstor Kirchner”²⁵

4. High-Ranking Chinese Government Officials

The BBC reports “the allegation that close relatives of seven current or former Chinese leaders have been found to have links to offshore firms. Documents leaked from Panama name family members of Chinese President Xi Jinping and two other members of China’s elite Standing Committee, Zhang Gaoli and Liu Yunshan.”²⁶

Despite currency restrictions, reports during recent years of wealthy Chinese moving money out of China are legion.²⁷ Scholarly inquiries into Chinese bribery and corruption are robust.²⁸ *The Wall Street*

25. Jonathan Gilbert, *Prosecutor May Add Ex-President to Inquiry*, N.Y. TIMES, Apr. 9, 2016, <https://www.nytimes.com/2016/04/10/world/americas/argentine-prosecutor-may-add-cristina-fernandez-de-kirchner-to-financial-inquiry.html>.

26. Jonty Bloom, *Panama Papers: 10 Things We’ve Learned*, BBC NEWS (Apr. 7, 2016), <http://www.bbc.com/news/business-35979313>.

27. See generally Craig Karmin, *Where Rich Chinese Are Stashing Their Cash: America’s Hotels and Strip Malls*, WALL ST. J., Dec. 8, 2015, 9:40 AM, <http://www.wsj.com/articles/where-rich-chinese-are-stashing-their-cash-americas-hotels-and-strip-malls-1449556200>; Lingling Wei & Anjani Trivedi, *China Boosts Efforts to Keep Money at Home*, WALL ST. J., Sept. 1, 2015, 7:26 PM, <http://www.wsj.com/articles/china-boosts-efforts-to-keep-money-at-home-1441120882>; Chuin-Wei Yap, *In China’s Alleyways, Underground Banks Move Money*, WALL ST. J., Oct. 27, 2015, 11:54 AM, <http://www.wsj.com/articles/in-chinas-alleyways-underground-banks-move-money-1445911877>.

28. See generally Andrew Ang, Jennie Bai & Hao Zhou, *The Great Wall of Debt: Real Estate, Corruption, and Chinese Local Government Credit Spreads* (Georgetown McDonough School of Business Research Paper No. 2603022, Aug. 28, 2016), <http://ssrn.com/abstract=2603022>; Udo C. Braendle, Tanja Gasser & Juergen Noll, *Corporate Governance in China—Is Economic Growth Potential Hindered by guanxi?* (Apr. 28, 2005), <http://ssrn.com/abstract=710203>; Hongbin Cai, Hanming Fang & Lixin Colin Xu, *Eat, Drink, Firms and Government: An Investigation of Corruption from Entertainment Expenditures of Chinese Firms* (Sept. 26, 2004), <http://ssrn.com/abstract=594961>; Daniel C. K. Chow, *Why China’s Crackdown on Commercial Bribery Threatens Multinational Companies in China*, 31 ARIZ. J. INT’L & COMP. L. 511 (2014); Bin Dong & Benno Torgler, *The Causes of Corruption: Evidence from China* (FEEM, Working Paper No. 72, 2010), <http://ssrn.com/abstract=1628107>; Weili Ge, Zining Li, Qiliang Liu & Sarah E. McVay, *When Does Internal Control Over Financial Reporting Curb Resource Extraction? Evidence from China* (2016), <http://ssrn.com/abstract=2704663>; Herschel I. Grossman & C. Simon Fan, *Incentives and Corruption in Chinese Economic Reform* (2000), <http://ssrn.com/abstract=261701>; Robert Harmel & Yao-Yuan Yeh, *Corruption and Government Satisfaction in Authoritarian Regimes: The Case of China*, APSA 2011 Annual Meeting Paper (Aug. 3, 2011) (unpublished manuscript), <http://ssrn.com/abstract=1899973>; Hilary K. Josephs,

Journal reports that one 2014 survey indicates that “64% of China’s rich—defined as those with assets more than \$1.6 million—are either emigrating or planning to.”²⁹ It appears that “First-generation businessmen—the ones who powered China’s economic rise—now dream of a secure retirement. That means legal safety in places like the U.S. and Canada.”³⁰ And, “[s]ome of the wealth sluicing out of China is undoubtedly ill-gotten gains. The Chinese central bank estimates that corrupt officials may have siphoned off as much as \$123 billion since the mid-1990s.”³¹

China recognizes that bribery and corruption are major threats to societal growth and stability.³² Professor Fu Hualing observes, “[t]hrough anti-corruption campaigns, emerging political leaders consolidate their political power, secure loyalty from political factions and regional political forces, and enhance their legitimacy in the eyes of the general public.”³³ Professor Fu Hualing continues:

The Upright and the Low-Down: An Examination of Official Corruption in the United States and the People’s Republic of China, 27 SYRACUSE J. INT’L L. & COM. 269 (2000); Ling Li, ‘Performing’ Bribery in China—Guanxi-Practice, Corruption with a Human Face, 20 J. CONTEMPORARY CHINA 1 (2011), <http://ssrn.com/abstract=1712390>; Wei Li, *Corruption and Resource Allocation: Evidence from China* (Darden Business School, Working Paper No. 01-18, William Davidson Institute, Working Paper No. 396, 2001), <http://ssrn.com/abstract=282523>; Allan Verman Yap Ong, Note, The Rise of the Prosecutorial Efforts in Foreign Corruption: Lessons Learned from Recent FCPA Cases (Mar. 24, 2010) (unpublished manuscript), <http://ssrn.com/abstract=1577444>; Carlos D. Ramirez, *Is Corruption in China ‘Out of Control’? A Comparison with the U.S. In Historical Perspective* (George Mason Univ. Dept. of Econ., Working Paper No. 12-60, 2012), <http://ssrn.com/abstract=2185166>; Susan Rose-Ackerman & Yingqi Tan, *Corruption in the Procurement of Pharmaceuticals and Medical Equipment in China: The Incentives Facing Multinationals, Domestic Firms and Hospital Officials* (Yale Law & Economics Research Paper No. 498, 2014), <http://ssrn.com/abstract=2444738>; Cindy A. Schipani, Junhai Liu & Haiyan Xu, *Doing Business in a Connected Society: The GSK Bribery Scandal in China*, 2016 U. ILL. L. REV. ONLINE 63 (2016), <http://ssrn.com/abstract=2579040>; Lawrence J. Trautman, *American Entrepreneur in China: Potholes and Roadblocks on the Silk Road to Prosperity*, 12 WAKE FOREST J. BUS. & INTELL. PROP. L. 425 (2012); Lawrence J. Trautman & Kara Altenbaumer-Price, *The Foreign Corrupt Practices Act: Minefield for Directors*, 6 VA L. & BUS. REV. 145 (2011); Lawrence J. Trautman, U.S. Entrepreneurial Risk in International Markets: Focus on Bribery and Corruption (Feb. 6, 2017) (unpublished paper) (on file with author), <https://ssrn.com/abstract=2912072>.

29. Andrew Browne, *The Great Chinese Exodus*, WALL ST. J., Aug. 15, 2014, <http://www.wsj.com/articles/the-great-chinese-exodus-1408120906>.

30. *Id.*

31. *Id.*

32. See generally Margaret K. Lewis, *Presuming Innocence, or Corruption, in China*, 50 COLUM. J. TRANSNAT’L L. 287 (2012).

33. Fu Hualing, *Wielding the Sword: President Xi’s New Anti-Corruption Campaign*, in GREED, CORRUPTION, AND THE MODERN STATE: ESSAYS IN POLITICAL ECONOMY 134, 134 (Susan Rose-Ackerman and Paul Felipe Lagunes eds., 2015).

In the modern world, economic prosperity, social stability and effective control of corruption often provide adequate compensation for a deficit of democracy. Corruption closely correlates with legitimacy. While a perceived pervasive, endemic corruption undermines the legitimacy of a regime, a successful anti-corruption campaign can allow a regime to recover from a crisis of legitimacy

This is the rationale behind the periodical campaigns against corruption that have been conducted by the Chinese Communist Party ('Party'). Political leaders in China have found it expedient to use anti-corruption campaigns to remove their political foes, to rein in the bureaucracy and to restore public confidence in their ability to rule.³⁴

Columbia University professor Andrew J. Nathan observes that China's president and general secretary of the Chinese Communist Party Xi Jinping's "anticorruption campaign has made him numerous enemies, and there have been rumors of assassination attempts He uses . . . charges of corruption rather than screaming Red Guards and accusations of revisionism to purge rivals"³⁵ In addition,

Xi holds office at a time when the regime has to confront a series of daunting challenges that have all reached critical stages at once. It must manage a slowing economy; mollify millions of laid-off workers; shift demand from export markets to domestic consumption; whip underperforming giant state-owned enterprises into shape; dispel a huge overhang of bad bank loans and nonperforming investments; ameliorate climate change and environmental devastation that are irritating the new middle class; and downsize and upgrade the military.³⁶

5. Russian President Vladimir V. Putin

Friends of Russian president Vladimir Putin "have shuffled \$2 billion through a network of banks and offshore firms, the ICIJ claims."³⁷ Former Moscow correspondent for *The Guardian*, Luke Harding, along with a team of reporters, "uncovered a web of more than 100 complex international transactions that revolved around an offshore firm linked to

34. *Id.* (citations omitted).

35. Andrew J. Nathan, *Who Is Xi?*, N.Y. REV. BOOKS (May 12, 2016), <http://www.nybooks.com/articles/2016/05/12/who-is-xi/>.

36. *Id.*

37. *Leak of the Century: The Lesson of the Panama Papers*, ECONOMIST (Apr. 9, 2016), <http://www.economist.com/news/leaders/21696532-more-should-be-done-make-offshore-tax-havens-less-murky-lesson-panama-papers?zid=305&ah=417bd5664dc76da5d98af4f7a640fd8a> [hereinafter *Leak of the Century*].

a musician named Sergei Roldugin, who is one of Mr. Putin's closest friends."³⁸ Reporter Harding continues about the suspected connection between Mr. Roldugin and Mr. Putin by observing that "[w]e knew money was being sent offshore from Russian state banks and being recycled back into Russia"³⁹ Mr. Roldugin, who has the distinction of being a cellist and godfather to one of President Putin's daughters, also owns "a 12.5% stake in Russia's once largest television-advertising agency (which has reportedly never disclosed its ownership); another 3.9% of Bank Rossiya, on which American imposed sanctions after Russia invaded Ukraine in 2014. American officials have described Rossiya as Mr. Putin's personal bank."⁴⁰

British newspaper *The Guardian* reported that "Vladimir Putin has offered his first response to the revelations in the Panama Papers, describing their publication as an attempt to destabilize Russia and saying there was no proof of corruption in the dossiers."⁴¹ It will likely come as no surprise that "[p]ublic opinion surveys indicate that corruption remains the Achilles' heel of the current Russian administration, because it seriously undermines public confidence in Russia's political system."⁴² The Russian government during recent years "has undertaken significant anti-corruption efforts in line with Organisation for Economic Co-operation and Development (OECD), World Trade Organization (WTO), and World Bank policy recommendations, but the results of such efforts at the company level are far from encouraging."⁴³ In discussing Russian corruption, Shaun McGirr states that "[r]eport after report quantifies losses to the public purse resulting from corruption"⁴⁴ Citing the official report from

38. Nicola Clark, *How a Cryptic Message, 'Interested in Data?', Led to the Panama Papers*, N.Y. TIMES, Apr. 5, 2016, <http://www.nytimes.com/2016/04/06/business/media/how-a-cryptic-message-interested-in-data-led-to-the-panama-papers.html?action=click&contentCollection>.

39. *Id.*

40. *The Furore from the Panama Papers Will Only Grow Bigger*, ECONOMIST (Apr. 5, 2016), <http://www.economist.com/news/international/21696240-huge-fallout-expected-panama-documents-leak?spc=scode&spv=xm&ah=9d7f7ab945510a56fa6d37c30b6f1709>.

41. Alec Luhn & Luke Harding, *Putin Dismisses Panama Papers as an Attempt to Destabilise Russia*, GUARDIAN, Apr. 7, 2016, <http://www.theguardian.com/news/2016/apr/07/putin-dismisses-panama-papers-as-an-attempt-to-destabilise-russia>.

42. Kirill Rogov, *Russia's Economy in April 2013: Preliminary Data and Major Trends*, RUSSIAN ECONOMIC DEVELOPMENTS 2 (2013), <http://ssrn.com/abstract=2271071>.

43. Stanislav Shekshnia, Alena Ledeneva & Elena Denisova-Schmidt, *How to Mitigate Corruption in Emerging Markets: The Case of Russia* 5 (Edmond J. Safra, Working Papers No. 36, 2014), <http://ssrn.com/abstract=2391950>.

44. Shaun McGirr, Note, *Deliberate Indiscretion: Why Bureaucratic Agencies are Differently Corrupt*, APSA Annual Meeting Paper; American Political Science Association 2013 Annual Meeting, 1 (2013), <http://ssrn.com/abstract=2299504>.

the Russian Audit Chamber, “[w]e estimate losses from corruption in public procurement amounted to US\$30 billion in 2012,’ . . . (approximately 7% of total government expenditures, and 17% of procurement expenditures).”⁴⁵ Moreover,

When Putin inevitably and repeatedly fails in his grand crusade to rid the Russian state of corruption once and for all, the vast majority of citizens do not blame him. Instead, they correctly understand the technical impossibility of the task he set himself and then infer that failure must be the fault of his underlings. Survey after survey confirms that Russians know that illegal extraction from the state by senior bureaucrats is rife. A plurality want harsh punishments for these officials. And yet for university graduates in business-related fields, the top-ten list of most-desired employers is littered with state-owned companies that present opportunities for corruption⁴⁶

In February 2016, Alexi Navalny, a Russian opposition leader and anti-corruption campaigner, “filed a lawsuit against Vladimir Putin after a company in which the Russian leader’s son-in-law is a shareholder received \$1.75 billion in state support . . . [alleging] Putin had violated Russian corruption laws by failing to declare a conflict of interest when he personally approved the financing.”⁴⁷ Navalny’s lawsuit is based on “a Reuters investigation reporting that Putin’s son-in-law, Kirill Shamalov, is a major shareholder in petrochemicals producer Sibur, which received the funding from Russia’s National Wealth Fund at an unusually low interest rate last year.”⁴⁸ Navalny posted on his blog that “Kirill Shamalov is the spouse of Putin’s daughter. Putin giving money

45. *Id.* (citations omitted).

46. *Id.* For more scholarly work about Russian corruption, see Anna Balsevich & Elena A. Podkolzina, *Indicators of Corruption in Public Procurement: The Example of Russian Regions* 18–19 (Higher School of Economics Research Paper No. WP BRP 76/EC/2014, 2014), <http://ssrn.com/abstract=2530518> (“[C]orruption has a great negative influence on procurement”); Ethan S. Burger & Mary Holland, *Law as Politics: The Russian Procuracy and its Investigative Committee* 142, 143, 177 (NYU School of Law, Public Law Research Paper No. 08-39, 2008) (arguing that the Russian Presidential Administration created the Procuracy’s important new Investigative Committee for corrupt political purposes and has played a role in expropriating private property and promoted illusory anti-corruption campaigns), <http://ssrn.com/abstract=1104700>; Ethan S. Burger, *Following Only Some of the Money in Russia* 41 (Georgetown Law and Economics Research Paper No. 10-01, 2009), <http://ssrn.com/abstract=1543240>; Anastasiia Rassadovskaia & Andrey Aistov, *Corruption Perceptions in Russia: Economic or Social Issue?* (Higher School of Economics Research Paper No. WP BRP 57/EC/2014, 2014) (concluding that Russian grassroots bribery exists by force of habit dating to Soviet times), <http://ssrn.com/abstract=2423708>.

47. Reuters, *Alexi Navalny Files Lawsuit Against Putin Over Alleged Conflict of Interest*, GUARDIAN, Feb. 11, 2016, <http://www.theguardian.com/world/2016/feb/11/alexei-navalny-files-lawsuit-vladimir-putin>.

48. *Id.*

to a company when the beneficiary is his child's partner is a classic conflict of interest."⁴⁹ Also in February 2016, "[t]he European court of human rights has ruled that Russia's conviction of opposition leader and blogger Alexi Navalny on charges of embezzlement was 'prejudicial,' saying he had been deprived of a fair trial."⁵⁰ This follows Navalny's conviction for "embezzling €400,000 during a 2009 . . . business deal . . . with the courts convicting [him] one day after Navalny registered as a candidate for the Moscow mayoral elections."⁵¹

To better understand life in present-day Russia, it may be helpful to recall that the collapse of the Soviet Union "brought economic uncertainty to many. The move towards a market-based system left many without work, on reduced hours or waiting many months for wages . . . between January 1991 and January 1993 the real average wage had fallen by half and hyper-inflation wiped out savings."⁵² Estimates by the Russian government about those citizens forced to live on incomes below the subsistence level are: 1992 (24% of the population); 1995 (33%); 2005 (24%); although fallen during 2008 (13%, about 10 million people); but for Moscow during 2008 (23%).⁵³ Professors Round and Williams report that "[l]ow pay was particularly common within the state sector, where teachers, medical staff, and many state bureaucrats received incomes below the subsistence minimum Many workers also experienced periods when wages went unpaid."⁵⁴ Round and Williams describe how the post-Soviet economy created a culture conducive to everyday bribery and corruption as follows:

Given the shortage economies that developed from the 1960s, even relatively trivial needs, such as a car repair or a new cooker, required a lengthy wait. Therefore, the use of informal networks to bypass such shortages rose as the Soviet economy ground to a halt. Given that there was little to buy in the shops, charging people for an informal service had relatively modest benefit. Instead, developing a network of favours to be called upon in the future was of greater use, giving rise to the saying 'it is better to have a hundred friends than a

49. *Id.*

50. Agence France-Presse, *Russia's Conviction of Opposition Leader Alexi Navalny 'Arbitrary', European Court Says*, GUARDIAN, Feb. 23, 2016, <http://www.theguardian.com/world/2016/feb/24/russias-conviction-of-opposition-leader-alexei-navalny-arbitrary-european-court-says>.

51. *Id.*

52. John Round & Colin C. Williams, *Coping with the Social Costs of 'Transition': Everyday Life in Post-Soviet Russia and Ukraine*, 17(2) EUR. URB. & REGIONAL STUD. 183, 185 (2010), <http://ssrn.com/abstract=2289927>. See also Richard Rose, *Corruption: Perception vs. Experience in Russia* (2011), <http://ssrn.com/abstract=2154824>.

53. Round & Williams, *supra* note 52, at 185.

54. *Id.*

hundred roubles'. The Soviet Union's collapse, and the introduction of market-style economies, saw a monetization of such behaviour, for example the demanding of bribes for access to services.⁵⁵

One scholar reports that, in Russia, even "academic corruption is tightly embedded into the general corruption in society: in politics, business, and in everyday life."⁵⁶

B. *Tip of the Iceberg?*

Other early disclosures include those regarding: oil contracts benefiting a nephew of South Africa's president Jacob Zuma;⁵⁷ Ukraine President Petro Poroshenko's offshore company suggested to be a tax haven;⁵⁸ information resulting in new criminal and internal investigations about ongoing FIFA global soccer bribery and corruption;⁵⁹ disclosures about offshore holdings by family members of Pakistan's Prime Minister Nawaz Sharif;⁶⁰ the offshore holdings of Spain's minister of industry, resulting in his resignation;⁶¹ and disclosure of offshore wealth held by Ayad Allani, "the former interim prime minister and former vice president of Iraq."⁶²

1. South African President Jacob Zuma

Early 2016 appears to have been difficult for South Africa's President, Jacob Zuma. Just days after the Panama Papers revelations became public, Zuma's nephew is reported by *The Economist* to have

55. *Id.* at 188.

56. Elena Denisova-Schmidt, *Justification of Academic Corruption at Russian Universities: A Student Perspective* (Edmond J. Safra Working Papers No. 30, 2013), <http://ssrn.com/abstract=2353513>.

57. See *Leak of the Century*, *supra* note 37; *South Africa Moment of Truth: Jacob Zuma Has Survived A Ruling that he Broke the Law, but his Grip on the ANC is Slipping*, *ECONOMIST* (Apr. 9, 2016), <http://www.economist.com/news/middle-east-and-africa/21696518-jacob-zuma-has-survived-ruling-he-broke-law-his-grip-anc> [hereinafter *Moment of Truth*].

58. *Ukraine Prime Minister Arseniy Yatsenyuk to Resign*, *BBC News* (Apr. 10, 2016), <http://www.bbc.com/news/world-europe-36010511> [hereinafter *Ukraine Prime Minister*].

59. See Rebecca R. Ruiz, *After Panama Papers, A Raid at UEFA and New Questions for FIFA*, *N.Y. TIMES*, Apr. 6, 2016, http://www.nytimes.com/2016/04/07/sports/soccer/panama-papers-raise-new-questions-for-fifa.html?_r=0.

60. See Martha M. Hamilton, *Pakistan's PM Leaves Country, Spanish Minister Resigns*, *THE INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS* (Apr. 15, 2016), <https://panamapapers.icij.org/20160415-pakistan-pressure-spain-resignation.html>.

61. *Id.*

62. See Holly Watt, *Panama Papers: Global Tax Officials to Launch Unprecedented Inquiry*, *GUARDIAN*, Apr. 12, 2016, <http://www.theguardian.com/news/2016/apr/12/panama-papers-global-tax-officials-inquiry-paris-meeting>.

done well “out of oil contracts in the Democratic Republic of Congo, where South Africa has sent more than 1,000 peacekeepers. Ordinary citizens are incensed. Mr. Zuma faced impeachment proceedings immediately over allegations that he misappropriated public money to build himself a palace and refused to pay it back.”⁶³ This comes at a time when Mr. Zuma’s popularity among voters and control over his political party appears to be experiencing severe pressure, as indicated in a report by *The Economist* that “a court will soon decide whether to reinstate some of the 783 charges of corruption, fraud, money-laundering, and tax evasion against Mr. Zuma that were dropped shortly before he came to power in 2009.”⁶⁴ On another front, “[a] union representing 16,000 soldiers demanded that Mr. Zuma be removed and urged its members to join ‘mass action campaigns’ against him With pressure mounting on Mr. Zuma, some fear the struggle may turn nasty.”⁶⁵

2. Ukraine President Petro Poroshenko

Add Ukraine President Petro Poroshenko to the growing list of world leaders who have become uncomfortable following the release of the Panama Papers. The BBC reports that Poroshenko came “under scrutiny . . . after leaked documents suggested that he had set up an offshore company as a tax haven.”⁶⁶ During 2015, Transparency International writes about the Ukraine:

Following the parliamentary elections held in October 2014, a new coalition agreement was signed, with anti-corruption reforms being one of the key priorities However, the success of these reforms is seriously jeopardised by the fact that the judiciary and law enforcement agencies fail to effectively enforce the existing rules. Failure to effectively investigate the alleged corruption offences committed under the Yanukovich regime, the emergence of new offences reported by the media during 2014, and the granting of public contracts to companies allegedly engaged in corrupt practices in recent years all add to the sense of impunity which prevails in the country.⁶⁷

63. *Leak of the Century*, *supra* note 37.

64. *Moment of Truth*, *supra* note 57.

65. *Id.*

66. *Ukraine Prime Minister*, *supra* note 58.

67. Andrew McDevitt, *The State of Corruption: Armenia, Azerbaijan, Georgia, Moldova and Ukraine*, TRANSPARENCY INT’L 25 (2015), http://www.transparency.org/whatwedo/publication/the_state_of_corruption_armenia_azerbaijan_georgia_moldova_and_ukraine.

While significant anti-corruption reforms have been introduced in the Ukraine, “an important gap remains the lack of an anti-corruption agency, although such an agency is envisaged in the form of . . . a National Anti-Corruption Bureau and National Agency for Prevention of Corruption.”⁶⁸ As of 2015, Ukraine has what may best be described as an unaccountable executive, where the president exercises strong executive function control over governmental work, “including: the power to determine foreign, national security and defense policy; to propose candidates for . . . minister of defense and foreign minister; to issue binding decrees; to appoint regional heads of regional and local administrations; and to suspend any government decision he/she considers to be inconsistent with the constitution.”⁶⁹ The judiciary is also subject to executive interference

in the form of alleged politically motivated appointments and removal of judges. This in turn diminishes the ability of the judiciary to hold the executive to account through effective judicial review, since the courts are highly politicized It is not surprising, therefore that 87 per cent of citizens perceive the judiciary to be corrupt or extremely corrupt.⁷⁰

3. FIFA Global Soccer Bribery and Corruption

After release of the Panama Papers, “Swiss authorities raided the headquarters of the European soccer association in Nyon, Switzerland . . . seizing information on television rights contracts with Argentine business executives implicated in the FIFA corruption scandal.”⁷¹ *The New York Times* article further reported that “FIFA’s independent ethics committee confirmed that one of its ethics lawyers was under internal investigation for a business relationship brought to light by the Panama Papers.”⁷²

On May 27, 2015, a 47-count indictment was unsealed by the United States Department of Justice in the U.S. District Court for the Eastern District of New York.⁷³ Fourteen defendants were charged in this indictment with “racketeering, wire fraud and money laundering conspiracies, among other offenses, in connection with the defendants’ participation in a 24-year scheme to enrich themselves through the

68. *Id.* at 26.

69. *Id.*

70. *Id.* at 26–27.

71. Ruiz, *supra* note 59.

72. *Id.*

73. *United States v. Jeffrey Webb et al.*, 15-CR-0252 (E.D.N.Y. May 20, 2015).

corruption of international soccer.”⁷⁴ On the same day, coordinated raids were held by “United States and Swiss officials on FIFA facilities in Miami and at FIFA headquarters in Zurich. Swiss authorities also conducted an early morning raid on Zurich’s luxury Baur du Lac Hotel arresting seven FIFA officials.”⁷⁵

Known as soccer in the United States, “international football is the world’s most popular sport. It is played in every country, territory, and remote island on the planet . . . requiring no elaborate infrastructure, no expensive equipment, and no extraordinary physical characteristics for those who simply want to kick a ball toward a goal”⁷⁶ According to the DOJ,

FIFA is composed of 209 member associations, each representing organized soccer in a particular nation or territory, including the United States and four of its overseas territories. FIFA also recognizes six continental confederations that assist it in governing soccer in different regions of the world. The U.S. Soccer Federation is one of 41 member associations of the confederation known as CONCACAF, which has been headquartered in the United States throughout the period charged in the indictment. The South American confederation, called CONMEBOL, is also a focus of the indictment.

As alleged in the indictment, FIFA and its six continental confederations, together with affiliated regional federations, national member associations and sports marketing companies, constitute an enterprise of legal entities associated in fact for purposes of the federal racketeering laws. The principal—and entirely legitimate—purpose of the enterprise is to regulate and promote the sport of soccer worldwide.

As alleged in the indictment, one key way the enterprise derives revenue is to commercialize the media and marketing rights associated with soccer events and tournaments. The organizing entity that owns those rights—as FIFA and CONCACAF do with respect to

74. Press Release, U.S. Dep’t of Justice, *Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption* (May 27, 2015), <https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and>.

75. Bruce W. Bean, *An Interim Essay on FIFA’s World Cup of Corruption: The Desperate Need for International Corporate Governance Standards at FIFA*, 22 ILSA J. INT’L & COMP. L. 367, 367–68 (2016).

76. *Id.* at 372. See also Jeff Todd & R. Todd Jewell, *Major League Soccer and the Corrupted 2022 FIFA World Cup Bidding: Proving Harm and Recovering Damages*, 41 VERMONT L. REV. 23 (2016); Jeff Todd & R. Todd Jewell, *Reclaiming Economic Legacy: One Legal Strategy For A 2022 FIFA World Cup USA*, 44 CAPITAL U. L. REV. 245 (2016).

the World Cup and Gold Cup, their respective flagship tournaments—sells them to sports marketing companies, often through multi-year contracts covering multiple editions of the tournaments. The sports marketing companies, in turn, sell the rights downstream to TV and radio broadcast networks, major corporate sponsors and other sub-licensees who want to broadcast the matches or promote their brands. The revenue generated from these contracts is substantial: according to FIFA, 70% of its \$5.7 billion in total revenues between 2011 and 2014 was attributable to the sale of TV and marketing rights to the 2014 World Cup.⁷⁷

In remarks given during her May 27, 2015 press conference to announce these charges, then-Attorney General Loretta E. Lynch stated, that “[b]eginning in 1991, two generations of soccer officials . . . used their positions of trust within their respective organizations to solicit bribes from sports marketers in exchange for the commercial rights to their tournaments. They did this over and over, year after year, tournament after tournament.”⁷⁸ For example, in 2016, the United States hosted the Copa America tournament. Attorney General Lynch says “[o]ur investigation revealed that what should be an expression of international sportsmanship was used as a vehicle in a broader scheme to line executives’ pockets with bribes totaling \$110 million—nearly a third of the legitimate costs of the rights to the tournaments involved.”⁷⁹ Attorney General Lynch continued:

In short, these individuals and organizations engaged in bribery to decide who would televise games; where the games would be held; and who would run the organization overseeing organized soccer worldwide. While at least one FIFA executive served as CONCACAF president without pay, there was little altruism involved, as he alone is alleged to have taken more than \$10 million in bribes over a 19-year period and amassed a personal fortune from his ill-gotten gains. In many instances, defendants and their co-conspirators planned aspects of their scheme during meetings held here in the United States; they used the banking and wire facilities of the United States to distribute bribe payments; and they planned to profit from their scheme in large part through promotional efforts directed at the growing U.S. market for soccer.⁸⁰

77. See Press Release, *supra* note 74.

78. Press Release, U.S. Dep’t of Justice, Attorney General Loretta E. Lynch Delivers Remarks at Press Conference Announcing Charges Against Nine FIFA Officials and Five Corporate Executives (May 27, 2015), <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-press-conference-announcing-charges>.

79. *Id.*

80. *Id.*

FIFA's own Ethics Committee took action on December 21, 2015, to ban the organization's "long-serving president, Joseph 'Sepp' Blatter, for eight years."⁸¹ According to Boudreau, Karahan, and Coats, "[a]s a monopolist in rule-making and holding a world championship tournament for the world's most popular sport, FIFA executives and board members are in a position to demand payoffs and/or can punish its adversaries with its venue selection or by banning national teams from tournament participation."⁸² Just days before release of the Panama Papers,

Rafael Callejas, the president of the Honduran soccer federation (FENAFUTH) from 2002 to 2015, pleaded guilty to racketeering conspiracy and wire fraud conspiracy in connection with his receipt of bribes in exchange for the awarding of contracts for the media and marketing rights to FIFA World Cup qualifier matches. Callejas, who served as the President of the Republic of Honduras from 1990 to 1994, also agreed to forfeit \$650,000. At sentencing, Callejas faces a maximum sentence of 20 years for each count.⁸³

By April 18, 2016, *The Wall Street Journal* had reported that "[s]eventeen of the 42 people publicly charged have pleaded guilty . . . [and that] U.S. officials hope the [Panama Papers] documents detail money flows and entities involved in the alleged scheme"⁸⁴

4. Pakistan's Prime Minister Nawaz Sharif

Panama Papers files examined by the International Consortium of International Journalists and its partners revealed that "[i]n Pakistan, opponents of Prime Minister Nawaz Sharif, including retired cricket star and politician Imran Khan, hammered him with demands that the country's corruption watchdog open an investigation Sharif announced that he would do so. Three of his children owned London

81. Christopher J. Boudreau, Gökhan Karahan & R. Morris Coats, *Bend it like FIFA: Corruption on and off the Pitch*, MANAGERIAL FIN. 1 (Jan. 14, 2016), <http://ssrn.com/abstract=2719718>.

82. *Id.*

83. Press Release, U.S. Dep't of Justice, Former President of Honduran Soccer Fed'n Pleads Guilty to Racketeering and Corruption Charges (Mar. 28, 2016), <https://www.justice.gov/usao-edny/pr/former-president-honduran-soccer-federation-pleads-guilty-racketeering-and-corruption>. See also Bruce W. Bean, FIFA Has Made the 'Beautiful Game' Ugly (Sept. 21, 2015) (providing important documents about the FIFA criminal proceeding; including full text of the Indictment, the criminal laws charged, the FIFA Statutes, and current Code of Ethics), <http://ssrn.com/abstract=2663789>.

84. Christopher M. Matthews, Aruna Viswanatha & Joe Flint, *Focus Shifts in FIFA Probe*, WALL ST. J., Apr. 18, 2016, at B1.

real estate through offshore companies.”⁸⁵ In developments reported just a few days later, “Prime Minister Nawaz Sharif, facing calls for his resignation as a result of his family’s holdings in offshore companies, checked himself into a London hospital . . . setting off speculation that he might not return to Pakistan until the furore dies down.”⁸⁶ Bribery and corruption in Pakistan has received the attention of many scholars.⁸⁷

5. Resignation of Spain’s Minister of Industry

When the Panama Papers first came to light, Spain’s Minister of Industry José Manuel Soria “vehemently denied any ties to an offshore company cited in the Panama Papers and reported by online newspaper *El Confidencial* and television station La Sexta.”⁸⁸ Minister Manuel Soria is reported to have said, “I totally deny that I have anything to do

85. Martha M. Hamilton, *Panama Papers Hit Political Agendas Around the World*, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 6, 2016), <https://panamapapers.icij.org/blog/20160406-world-leaders-reactions.html>.

86. *Id.*

87. See generally, Alia Ahmed & Munir Ahmad, *Accountability Structures: A Comparative Analysis*, CITIZENS’ PERIODIC REP. ON THE PERFORMANCE OF STATE INST., PILDAT REP. (2015), <http://ssrn.com/abstract=2592040>; M. Shahid Alam, *Corruption and Countervailing Action in Pakistan*, POL. DIMENSION OF ECON. GROWTH (S. Borner, M. Paldam, M. Kaser, eds., Palgrave, 1998), <http://ssrn.com/abstract=2270141>; Saad Siddique Bajwa, *A Comparative Analysis of Anti-Money Laundering Law in the United Kingdom and Pakistan* (2013), <http://ssrn.com/abstract=2372983>; Sheheryar Banuri & Catherine C. Eckel, *Cracking Down on Bribery*, 45 SOC. CHOICE & WELFARE (2015), <http://ssrn.com/abstract=2212713>; Michael Joseph Callen, Saad Gulzar, Syed Ali Hasanain & Muhammad Yasir Khan, *The Political Economy of Public Employee Absence: Experimental Evidence from Pakistan* (2013), <http://ssrn.com/abstract=2316245>; Katharina Gangl, Erich Kirchler, Christian Lorenz & Benno Torgler, *Wealthy Tax Non-Filers in a Developing Country: Taxpayer Knowledge, Perceived Corruption and Service Orientation in Pakistan* (2015), <http://ssrn.com/abstract=2643456>; Zahid Hasnain, *Devolution, Accountability, and Service Delivery: Some Insights from Pakistan* (World Bank Policy Res., Working Paper No. 4610, 2008), <http://ssrn.com/abstract=1149113>; Jonathan Jackson, Muhammad Asif, Ben Bradford & Muhammad Zakria Zakar, *Corruption and Police Legitimacy in Lahore, Pakistan* (Apr. 6, 2014) (unpublished manuscript), <http://ssrn.com/abstract=2421036>; Asim Ijaz Khwaja & Atif R. Mian, *Do Lenders Favor Politically Connected Firms? Rent Provision in an Emerging Financial Market*, 120 Q. J. ECON. (2005), <http://ssrn.com/abstract=901943>; Muhammad Munir, *Trafficking in Persons: Faulty Regulations, Pervasive Corruption and Flawed Policing in Pakistan* (2014), <http://ssrn.com/abstract=2508880>; Lorenzo Pellegrini, *The Rule of the Jungle in Pakistan: A Case Study on Corruption and Forest Management in Swat* (FEEM Working Paper No. 91, 2007), <http://ssrn.com/abstract=1017233>; Nabeel M. Saleheen, *Pakistan: A Collapsed State* (May 10, 2013) (unpublished thesis) (on file with the Marymount University), <http://ssrn.com/abstract=2263077>; Muhammad Sohail, Muhammad Arslan & Rashid Zaman, *The Impact of Corruption on Firm Performance: Evidence from Pakistan*, 4 PUB. POL’Y & ADMIN. RESEARCH 121 (2014) <http://ssrn.com/abstract=2515045>.

88. See Hamilton, *supra* note 60.

with any company based in Panama, or any other tax haven.”⁸⁹ However, the International Consortium of Investigative Journalists and its partners reported that “Spanish media caught the minister in a series of lies about his involvement in offshore companies, which culminated with newspaper El Mundo proving the minister was director of a Jersey-based company up to 2002, when he was already into politics.”⁹⁰ Although Minister Manuel Soria has not been accused of wrong-doing, he resigned “because of ‘the succession of mistakes committed along the past few days, relating to my explanations over my business activities . . . and considering the obvious harm that this situation is doing to the Spanish government.’”⁹¹

C. ICIJ Year-Long Effort of Research and Analysis

The genesis of the Panama Papers saga began in early 2015 with a cryptic message sent to a Munich-based newspaper, *Süddeutsche Zeitung*, known for having worked on money-laundering and tax evasion scandals.⁹² After about two months of working on the massive documents, *Süddeutsche*’s five-person investigations team was overwhelmed with the enormity of the task and reached out to The International Consortium of Investigative Journalists (ICIJ) for help.⁹³ The ICIJ is “a nineteen-year-old subsidiary of a nonprofit news organization in Washington called the Center for Public Integrity.”⁹⁴ Founded in 1997, the ICIJ describes itself as “a global network of more than 190 investigative journalists in more than 65 countries who collaborate on in-depth investigative stories.”⁹⁵ As a collaborative response to the recent news industry’s plight of slashed budgets and dismantled investigative teams, the ICIJ’s stated aim is to “bring journalists from different countries together in teams—eliminating rivalry and promoting collaboration.”⁹⁶ “The I.C.I.J. has only eleven full-time employees.”⁹⁷ However, “[w]ithin weeks, the ICIJ had assembled an army of about 400 journalists from more than 100 news organizations in 80 countries, including The Guardian and BBC in

89. *Id.*

90. *Id.*

91. *Id.*

92. See Clark, *supra* note 38.

93. *Id.*

94. Nicholas Lemann, *The Panama Papers and the Monster Stories of the Future*, NEW YORKER (Apr. 14, 2016), <http://www.newyorker.com/news/news-desk/the-panama-papers-and-the-monster-stories-of-the-future>.

95. About The ICIJ, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Feb. 13, 2012), <https://www.icij.org/about> (last viewed Mar. 5, 2017).

96. *Id.*

97. Lemann, *supra* note 94.

Britain, the French daily *Le Monde*, the *Sonntagszeitung* in Switzerland, and *L'Espresso*, an Italian weekly newsmagazine.”⁹⁸

A common strategy was required for collaboration of parsing out the research to such a large group of people simultaneously examining the same database. Resources at the ICIJ included about a dozen full-time staffers, plus freelancers—and

The ICIJ made a number of powerful research tools available to the consortium that the group had developed for previous leak investigations. Those included a secure, Facebook-type forum where reporters could post the fruits of their research, as well as a database search program called “Blacklight” that allowed the teams to hunt for specific names, countries or sources.⁹⁹

Also required was a promise by all involved to withhold publishing “until everyone was ready.”¹⁰⁰

ICIJ’s epic Panama Papers investigation benefitted from their experience with an earlier set of data leaked to France’s leading newspaper *Le Monde*.¹⁰¹ While at Harvard’s Shorenstein Center on Media, Politics, and Public Policy, award winning journalist Bill Buzenberg describes *Le Monde*’s 2014 dilemma about to proceed with an investigation involving 120,000 named potential tax avoiders worldwide.¹⁰² The disclosures involved HSBC’s (formerly known as Hong Kong and Shanghai Bank Corporation) Swiss Private Bank, and “current and former politicians from Britain, Russia, Ukraine, Georgia, Kenya, Romania, India, Liechtenstein, Mexico, Tunisia, Congo, Paraguay, Senegal, the Philippines and many others.”¹⁰³ Journalist Buzenberg reports that “*Le Monde*’s leak was based on documents stolen in 2006 and 2007 by a computer technician then working for the HSBC Swiss private bank in Geneva.”¹⁰⁴ Involving up to “170 reporters working for 65 media organizations . . . [c]ountry by country, the investigation showed how HSBC profited from laundering money for drug cartels and blood diamond dealers, how it did business with tax

98. Clark, *supra* note 38.

99. *Id.*

100. *Id.*

101. See William E. Buzenberg, *Anatomy of a Global Investigation: Collaborative, Data-Driven, Without Borders*, HARV. KENNEDY SCH. SHORENSTEIN CTR. ON MEDIA, POLITICS & PUB. POL’Y DISCUSSION PAPER SER. #D-94, 3 (2015), <http://shorensteincenter.org/wp-content/uploads/2015/07/Anatomy-of-a-Global-Investigation-William-Buzenberg.pdf>.

102. *Id.* at 4. See also Bill Buzenberg, THE CTR. FOR PUB. INTEGRITY, <https://www.publicintegrity.org/authors/bill-buzenberg> (last viewed Feb. 28, 2017).

103. Buzenberg, *supra* note 101, at 4.

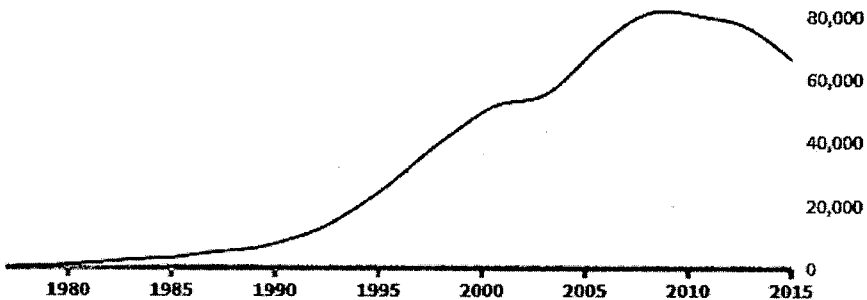
104. *Id.*

dodgers and criminals, how it transferred funds for Iran and other blacklisted countries.”¹⁰⁵

D. *Mossack Fonseca*

By April 4, 2016, leaked confidential documents from the Panamanian law firm Mossack Fonseca had received global focus because “[they] exposed how some of the world’s most powerful people were said to have used offshore bank accounts to conceal their wealth or avoid taxes.”¹⁰⁶ Exhibit 3 illustrates that the “number of active companies managed by Mossack Fonseca peaked in 2009, with almost 82,000, and have since been in decline.”¹⁰⁷

Exhibit 3
Offshore Companies Actively Managed by Mossack Fonseca
Since 1977



Source: The Panama Papers¹⁰⁸
International Consortium of Investigative Journalists

Founded in 1986 by Jürgen Mossack and Ramón Fonseca, the law firm “has become a global behemoth—hundreds of employees spread around the world, with special expertise in creating tax shelters for wealthy global elites. The firm is also, according to documents in the ‘Panama Papers,’ deeply involved with all manner of unsavory and possibly

105. *Id.* at 5.

106. *What are the Panama Papers?*, N.Y. TIMES, Apr. 4, 2016, http://www.nytimes.com/2016/04/05/world/panama-papers-explainer.html?_r=0.

107. Carvajal et al., *supra* note 5 (stating that offshore companies are normally only active for a short amount of time).

108. *See id.*

illegal practices across continents”¹⁰⁹ Please note, as more fully covered below,¹¹⁰ that Mossack Fonseca has strenuously denied any wrongdoing. Also, within weeks of the initial disclosures, Mossack Fonseca announced its aggressive legal action plan against the ICIJ in response to the data leaks.¹¹¹

The firm Mossack Fonseca dates back to 1977 when recent law school graduate Ramón Fonseca, after spending six years in Geneva working for the United Nations, returned to Panama City and launched his law practice with one secretary.¹¹² Law partner Ramón Fonseca is politically active, serving as minister counselor to Ricardo Martinelli, Panama’s president during the 1990s, and is “close to Panama’s current president, Juan Carlos Varela, and part of his informal kitchen cabinet.”¹¹³

Soon after first accounts of revelations from the Panama Papers, Mossack Fonseca had posted to its website a “Statement Regarding Recent Media Coverage,” stating that “recent media reports have portrayed an inaccurate view of the services that we provide and, despite our efforts to correct the record, misrepresented the nature of our work and its role in global financial markets.”¹¹⁴ The Statement continues:

These reports rely on supposition and stereotypes, and play on the public’s lack of familiarity with the work of firms like ours. The unfortunate irony is that the materials on which these reports are based actually show the high standards we operate under, specifically that:

- we conduct due diligence on clients at the outset of a potential engagement and on an ongoing basis;
- we routinely deny services to individuals who are compromised or who fail to provide information we need in order to comply with

109. David A. Graham, *What is Mossack Fonseca, the Law Firm in the Panama Papers?*, ATLANTIC, (Apr. 4, 2016), <http://www.theatlantic.com/international/archive/2016/04/panama-papers-mossack-fonseca/476727/>.

110. See *infra* App. 1.

111. See Vasudevan Sridharan, *Mossack Fonseca to Begin ‘Aggressive Legal Action’ Against ICIJ Over Panama Papers*, INT’L. BUS. TIMES (May 12, 2016), <http://www.ibtimes.co.uk/mossack-fonseca-begin-aggressive-legal-action-against-icij-over-panama-papers-1559622>.

112. See Juliette Garside, Luke Harding, Holly Watt, David Pegg, Helena Bengtsson, Simon Bowers, Owen Gibson and Nick Hopkins, *Mossack Fonseca: Inside the Firm that Helps the Super-Rich Hide Their Money*, GUARDIAN, Apr. 8, 2016, <http://www.theguardian.com/news/2016/apr/08/mossack-fonseca-law-firm-hide-money-panama-papers>.

113. *Id.*

114. *Statement Regarding Recent Media Coverage*, MOSSACK FONSECA, 1 (Apr. 1, 2016), http://mossfonmedia.com/wp-content/uploads/2016/04/Statement-Regarding-Recent-Media-Coverage_4-1-2016.pdf.

“know your client” obligations or when we identify other red flags through our due diligence;

- we routinely resign from client engagements when ongoing due diligence and/or updates to sanctions lists reveals that a party to a company for which we provide services been either convicted or listed by a sanctioning body;
- we routinely comply with requests from authorities investigating companies or individuals for whom we are providing services; and
- we work with established intermediaries, such as investment banks, accountancies and law firms, as part of the regulated global financial system.¹¹⁵

While the Mossack Fonseca “Statement Regarding Recent Media Coverage,” dated April 1, 2016, is reproduced in its entirety as Appendix One,¹¹⁶ a portion of this descriptive language regarding services provided to clients may be of interest to many taxing authorities around the world:

(h) Backdated Documents: The issuance of documents with a retroactive date is a well-founded and accepted practice when the decisions made with regard to the particular document are recorded in resolutions approved before or when the transaction in particular has taken place and the formalization is still pending. Such practice is common in our industry and its aim is not to cover up or hide unlawful acts.¹¹⁷

E. Not All Are Involved in Illegal Activity

Financial and currency crises are a constant threat in many parts of the world.¹¹⁸ All those who move their honestly-obtained personal assets

115. *Id.*

116. *Id.*

117. *Id.* at 4.

118. See Graham Bird & Ramkishen S. Rajan, *Restraining International Capital Movements: What Does It Mean?* (Ctr. Int’l Econ. Stud. Working Paper No. 14, 2000), <http://ssrn.com/abstract=231207>; Benedict Clements & Herman Kamil, *Are Capital Controls Effective in the 21st Century? The Recent Experience of Colombia* (IMF, Working Paper No. 09/30, 2009), <http://ssrn.com/abstract=1356459>; Kristin J. Forbes & Michael W. Klein, *Pick Your Poison: The Choices and Consequences of Policy Responses to Crises* (MIT Sloan Sch. of Mgmt., Working Paper No. 5062-13, 2013), <http://ssrn.com/abstract=2364457>; Michael M. Hutchison & Reuven Glick, *Capital Controls and Exchange Rate Instability in Developing Economies* (UCSC Dept. of Econ., Working Paper No. 489, 2000), <http://ssrn.com/abstract=288843>; Hiro Ito, *Is Financial Openness a Bad Thing? An Analysis on the Correlation Between Financial Liberalization and the Output Performance of Crisis-Hit Economies* (UCSC Int’l Econ., Working Paper No. 04-23, 2004), <http://ssrn.com/abstract=621801>; Carmen Reinhart & Kenneth Rogoff, *Financial and Sovereign Debt Crises: Some Lessons Learned and*

away from their home country have not committed an illegal or immoral act. Similarly, all names appearing in the Panama Papers are not involved in criminal activity. Imagine that you and your family are citizens of a country plagued with a history of political and/or currency instability. To protect your family from financial ruin, it seems logical and reasonable that you will seek to diversify your assets away from such known risks. We all examine issues of bribery, corruption, tax avoidance, and tax evasion through a lens shaped by our own individual and cultural experiences. Those who have not traveled extensively may not understand the extent to which currency restrictions are prevalent in many countries and devaluations are a real threat to many in their daily lives.

Readers fortunate enough to live in a country having stable economic conditions may not appreciate the daily struggle encountered by those facing perceived threats of currency devaluations, land expropriation, or political instability. Consider the following examples of abrupt regime change: Brazil (2016);¹¹⁹ Burmese coup (1962);¹²⁰ Chad;¹²¹ Cuba (1959);¹²² collapse of communism in Eastern Europe (1990);¹²³ Egypt (2013);¹²⁴ Iran (1979);¹²⁵ Iraq (2003);¹²⁶ Russian

Those Forgotten (IMF, Working Paper No. 13/266, 2013), <http://ssrn.com/abstract=2387533>.

119. See Paulo Trevisani & Reed Johnson, *New Brazilian Leader Faces Rocky Path*, WALL ST. J., May 13, 2016, at A6.

120. See Myint Zan, *A Comparison of the First and Fiftieth Year of Independent Burma's Law Reports*, 35 VICTORIA U. WELLINGTON L. REV. 385 (2004) (NZ).

121. See Achille Toto Same, *Windfall Management for Poverty Reduction: Improving Public Finance Management—The Case of Chad* (WBG, Pol'y Res. Working Paper No. 4569, 2008), <http://ssrn.com/abstract=1149099>.

122. See generally Jon L. Mills & Daniel Ryan Koslosky, *Whither Communism: A Comparative Perspective on Constitutionalism in a Postsocialist Cuba*, 40 GEO. WASH. INT'L L. REV. 1219 (2009); HUGH THOMAS, *THE CUBAN REVOLUTION* (1977) (discussing events preceding and following the 1959 Cuban Revolution); Kurt Weyland, *The Diffusion of Authoritarian Rule: An Analysis of Causal Mechanisms* 1–50 (2013) (unpublished manuscript) (on file with the Am. Pol. Sci. Ass'n.), <http://ssrn.com/abstract=2299101>.

123. See Fred Eidlin, *Some Thoughts on the Collapse of the GDR and its Consequences*, in GERMAN MONITOR—GERMANY AFTER UNIFICATION: COMING TO TERMS WITH THE RECENT PAST, 101–07 (Gert-Joachim Glaessner ed., 1997); Jakub J. Szczerbowski & Paulina Piotrowska, *Measures to Dismantle the Heritage of Communism in Eastern and Central Europe: Human Rights' Context*, in 62/63 CUADERNOS CONSTITUCIONALES DE LA CÁTEDRA FADRIQUE FURIÓ CERJOL 233–48 (2010); Daniel Munich, Jan Svenjar & Katherine Terrell, *Returns to Human Capital under the Communist Wage Grid and During the Transition to a Market Economy* (Inst. Study of Lab., Discussion Paper No. 122, 2000), <http://ssrn.com/abstract=224229>.

124. See Thomas M. McDonnell, *The Egyptian Coup, the United States, and a Call to Strengthen the Rule of Law and Diplomacy Rather than Military Counter-Terrorism*, 41 N.C. J. INT'L L. 326, 365–75 (2016).

Revolution (1917);¹²⁷ former Yugoslavia (1990s);¹²⁸ and assorted crisis situations in Afghanistan,¹²⁹ Congo,¹³⁰ Haiti,¹³¹ Ivory Coast,¹³² Liberia,¹³³

125. See generally Victor H. Sundquist, *Iranian Democratization Part I: A Historical Case Study of the Iranian Green Movement*, 6 U. S. FL. J. STRATEGIC SECURITY 19 (2013); McDonnell, *supra* note 124.

126. See generally Linda Bilmes & Joseph E. Stiglitz, *The Economic Costs of the Iraq War: An Appraisal Three Years after the Beginning of the Conflict* (Harv. KSG, Working Paper No. 06-002, 2006), <http://ssrn.com/abstract=832646>; Andrew Leigh, Justin Wolfers & Eric Zitzewitz, *What do Financial Markets Think of War in Iraq?* (Stan. GSB, Research Paper No. 1785, 2003), <http://ssrn.com/abstract=388762>; William D. Nordhaus, *The Economic Consequences of a War with Iraq* (Cowles Foundation, Discussion Paper No. 1387, 2002), <http://ssrn.com/abstract=357723>; George Selgin, Synthetic Commodity Money 1-28 (Apr. 10, 2013) (unpublished manuscript) (on file with the Cato Inst.), <http://ssrn.com/abstract=2000118>; Yochanan Shachmurove, *Financial Markets of the Middle East and North Africa: The Past and Present* (Penn Ins. Econ. Res., Working Paper No. 03-017, 2003), <http://ssrn.com/abstract=419780>; John Yoo, *International Law and the War in Iraq*, 97 AM. J. INT'L L. 563 (2003).

127. See Weyland, *supra* note 122.

128. See Valentin Cojanu & Alina-Irina Popescu, *Analysis of Failed States: Some Problems of Definition and Measurement*, 25 ROM. ECON. J. 113 (2007) (Rom.); Diane Marie Amann, *Harmonic Convergence? Constitutional Criminal Procedure in an International Context*, 75 IND. L. J. 810, 841 (2000).

129. See generally Kenneth Anderson, *Humanitarian Inviolability in Crisis: The Meaning of Impartiality and Neutrality for U.N. And Ngo Agencies Following the 2003-2004 Afghanistan and Iraq Conflicts*, 17 HARV. HUM. RTS. J. 41 (2004); Niccolo Leo Caldararo, *Al-Qaeda, ISIS, Boko Haram and Forms of Rebellion in the 21st Century in the Vacuum of Ottoman Soviet 'Collapse'*, 2-36 (Sep. 9, 2014) (unpublished manuscript), <http://ssrn.com/abstract=2494027>.

130. See generally Susan Rice, Corinne Graff & Janet I. Lewis, *Poverty and Civil War: What Policymakers Need to Know* (Brookings Global Econ. & Dev., Working Paper No. 2, 2006), <http://ssrn.com/abstract=1015091>.

131. *Id.*

132. *Id.*

133. See Daron Acemoglu & James A. Robinson, *Persistence of Power, Elites, and Institutions* (MIT Dep't Econ., Working Paper No. 06-05, 2006), <http://ssrn.com/abstract=888187>; Christopher Blattman & Jeannie Annan, *Can Employment Reduce Lawlessness and Rebellion? A Field Experiment with High-Risk Men in a Fragile State* (NBER, Working Paper No. 21289, 2015), <http://ssrn.com/abstract=2431293> (observing that Liberia's war ended in 2003); Deval Desai, Deborah Isser, & Michael Woolcock, *Rethinking Justice Reform in Fragile and Conflict-Affected States: The Capacity of Development Agencies and Lessons from Liberia and Afghanistan*, in 3 WORLD BANK LEGAL REVIEW: INTERNATIONAL FINANCIAL INSTITUTIONS AND GLOBAL LEGAL GOVERNANCE 241 (Daniel D. Bradlow et al. eds., World Bank 2011); James D. Fearon, Macartan Humphreys & Jeremy M. Weinstein, *Development Assistance, Institution Building, and Social Cohesion after Civil War: Evidence from a Field Experiment in Liberia* (Ctr. for Global Dev., Working Paper No. 194, 2009), <http://ssrn.com/abstract=1517941>; Anna Gelpern, *Odious, Not Debt*, 71 L. & CONTEMP. PROBS. 101, 101-133 (2007); Zachary D. Kaufman, *The Future of Transitional Justice*, 1 ST. ANTONY'S INT'L REV. 58, 58-81 (2005) (Eng.); Lant Pritchett, Michael Woolcock & Matthew Andrews, *Capability Traps? The Mechanisms of Persistent Implementation Failure* (Ctr. for Global Dev., Working Paper No. 234, 2010), <http://ssrn.com/abstract=1824519>; Willem van Genugten, *UN Peacekeeping in Africa and Good Governance: Challenges and Prospects*, 11 POTCHEFSTROOM ELECTRONIC J. 1, 1-48 (2008) (S. Afr.); Patrick Vinck, Phuong Pham & Tino Kreutzer, HUM. RTS. CTR., U.

Rwanda,¹³⁴ and Sierra Leone.¹³⁵ More recently, examples of completely failed states include Libya¹³⁶ and Somalia.¹³⁷

Professor Graciella Kaminsky discloses ninety-six currency crises occurring between January 1970 and February 2002 (pre sub-prime mortgage crisis of 2007-08)¹³⁸ in Argentina,¹³⁹ Bolivia,¹⁴⁰ Brazil,¹⁴¹ Chile,¹⁴² Colombia,¹⁴³ Denmark,¹⁴⁴ Finland,¹⁴⁵ Indonesia,¹⁴⁶ Israel,¹⁴⁷ Malaysia,¹⁴⁸ Mexico,¹⁴⁹ Norway,¹⁵⁰ Peru,¹⁵¹ Spain,¹⁵² Sweden,¹⁵³ the

CAL. BERKELEY, TALKING PEACE: A POPULATION-BASED SURVEY ON ATTITUDES ABOUT SECURITY, DISPUTE RESOLUTION, AND POST-CONFLICT RECONSTRUCTION IN LIBERIA (2011).

134. See generally David Quinn et al., *Overcoming Barriers to Peace: Mediating Violent, Ethnic, Intra-State Crises in Africa* 1-37 (Sep. 2009) (unpublished manuscript) (on file with the Am. Pol. Sci. Ass'n.), <http://ssrn.com/abstract=1450568>.

135. See Cojanu & Popescu, *supra* note 128, at 123, 132; Rice et al., *supra* note 130, at 4-12; Matiangai V. S. Sirleaf, *Beyond Truth & Punishment in Transitional Justice*, 54 VA. J. INT'L L. 223 (2014).

136. See generally Rosa Brooks, *Lessons for International Law from the Arab Spring*, 28 AM. U. INT'L L. REV. 713 (2013); Simon Chesterman, "Leading from Behind": *The Responsibility to Protect, the Obama Doctrine, and Humanitarian Intervention After Libya*, 25 ETHICS & INT'L AFFAIRS 279 (2011); Jack A. Goldstone, *Bringing Regimes Back in—Explaining Success and Failure in the Middle East Revolts of 2011* 1-25 (Mar. 10, 2013) (unpublished manuscript), <http://ssrn.com/abstract=2283655>; David Landau, *The Importance of Constitution-Making*, 89 DENVER U. L. REV. 1 (2011); Saira Mohamed, *Taking Stock of the Responsibility to Protect*, 48 STAN. J. INT'L L. 63 (2012); Jordan J. Paust, *International Law, Dignity, Democracy, and the Arab Spring*, 46 CORNELL INT'L L. J. 1 (2013); Neomi Rao, *The Choice to Protect: Rethinking Responsibility for Humanitarian Intervention*, 44 COLUM. HUM. RTS. L. REV. 697 (2013); Dan E. Stigall, *Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law*, 3 NOTRE DAME J. INT'L & COMP. L. 1 (2013); Rachel Elizabeth VanLandingham, *The Stars Aligned: The Legality, Legitimacy, and Legacy of 2011's Humanitarian Intervention in Libya*, 46 VAL. U. L. REV. 859 (2012).

137. See Milena Sterio, *The Somali Piracy Problem: A Global Puzzle Necessitating a Global Solution* (Cleve.-Marshall Coll. of Law, Working Paper No. 10-189, 2010), <http://ssrn.com/abstract=1576708>.

138. See Graciella Kaminsky, *Varieties of Currency Crises* 1 (Nat'l Bureau of Econ. Res., Working Paper No. 10193, 2003), <http://ssrn.com/abstract=483124>.

139. See *id.* at 1, 8; see also Sumit Agarwal, Souphala Chomsisengphet & Olivier Hassler, *The Impact of the 2001 Financial Crisis and the Economic Policy Responses on the Argentine Mortgage Market*, 14 J. HOUSING ECON. 242 (2005).

140. See Kaminsky, *supra* note 138, at 1, 8.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*; see also Marek Dabrowski, *The Episodes of Currency Crisis in Latin American and Asian Economies*, CASE Network Reports No. 39 (2009), <http://ssrn.com/abstract=1434353>.

147. See Kaminsky, *supra* note 138 at 1, 8.

148. *Id.*; see also Dabrowski, *supra* note 146.

Philippines,¹⁵⁴ Thailand,¹⁵⁵ Turkey,¹⁵⁶ Uruguay,¹⁵⁷ and Venezuela.¹⁵⁸ Other examples of countries that had disruptive currency devaluations include: Greece;¹⁵⁹ Hong Kong (1997);¹⁶⁰ Korea (1997);¹⁶¹ Russia;¹⁶² Singapore (1997);¹⁶³ and Taiwan (1997).¹⁶⁴ Nikoloski contends that it is the *currency* crisis, as opposed to *banking* or *sovereign debt* crises that most significantly exacerbates the depth and incidence of poverty in the near term.¹⁶⁵ Other scholars have written about the impact of the Russian 1998 crisis on Latin American countries,¹⁶⁶ and other examples of currency restrictions and lost purchasing power.¹⁶⁷

Argentina is but one example of what happens to individuals caught up in economic crisis.¹⁶⁸ Scholars attribute factors such as the uneasy

149. See Kaminsky, *supra* note 138, at 1, 8; see also Liliana B. Schumacher, *Bank Runs and Currency Run in a System Without a Safety Net: Argentina and the 'Tequila' Shock*, 46 J. MONETARY ECON. 257 (2000).

150. See Kaminsky, *supra* note 138, at 1, 8.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*; see also Alicia García Herrero, Jacob Gyntelberg & Andrea Tesei, *The Asian Crisis: What Did Local Stock Markets Expect?*, (Bank for Int'l Settlements, Working Papers No. 261, 2009) <http://ssrn.com/abstract=1468133>.

155. See Kaminsky, *supra* note 138, at 1, 8.

156. *Id.*

157. *Id.*

158. *Id.*

159. See Alexandra Vlachopoulou, *Crises in Emerging Market Economies: Lessons for Greece* (Nov. 16, 2012) (unpublished manuscript), <http://ssrn.com/abstract=2423704>.

160. See Andrea Ordanini & Laura Zanetti, *The Non-Monetary Effects of the Far East Financial Crisis on European Union Economies*, 4 EUR. UNION REV. 91 (1999).

161. See Celso Brunetti et al., *Markov Switching Garch Models of Currency Crises in Southeast Asia* (Penn Inst. For Econ. Res., Working Paper No. 03-008, 2003), <http://ssrn.com/abstract=392460>.

162. See Vlachopoulou, *supra* note 159, at 25–33.

163. See Ordanini & Zanetti, *supra* note 160.

164. *Id.*

165. Zlatko Nikoloski, *Impact of Financial Crises on Poverty in Developing World: An Empirical Approach*, 2–5 (Ctr. for Comparative Econ., Working Paper No. 110, 2010), <http://ssrn.com/abstract=1701894>.

166. Guillermo A. Calvo & Ernesto Talvi, *Sudden Stop, Financial Factors and Economic Collapse in Latin America: Learning from Argentina and Chile* (NBER, Working Paper No. 11153, 2005), <http://ssrn.com/abstract=669452>.

167. Pablo Bustelo, *Capital Flows and Financial Crises: A Comparative Analysis of East Asia (1997–98) and Argentina (2001–02)* (Complutense U. of Madrid Econ., Working Paper No. 2004-017, 2004), <http://ssrn.com/abstract=612784>; Wei Li, *Dealing with Capital Flows: Thailand in 2006* (Darden Case No. UVA-BP-0511), <http://ssrn.com/abstract=1276570>.

168. See generally Enrique Alberola, Humberto Lopez & Luis Servén, *Tango with the Gringo: The Hard Peg and Real Misalignment in Argentina* (World Bank Policy Res., Working Paper No. 3322, 2004), <http://ssrn.com/abstract=610367>; Werner Baer, Pedro Elosegui & Andres A. Gallo, *The Achievements and Failures of Argentina's Neo-Liberal Economic Policies* (U of Ill., Res., Working Paper No. 01-0114, 2001),

lack of “confidence in Argentina’s domestic currency and the banking sector due to the continuous changes in regulations on interest rates and foreign exchange markets as well as the forced conversions of bank deposits in 1985, 1989, and 2001 as triggers of runs against the [Argentine] peso.”¹⁶⁹ During the mid 1970s to 2002, Argentina had eight currency crises, four banking crises, and two sovereign defaults.¹⁷⁰ For most of the decade following 2001, the Argentine government limited daily “money withdrawals from the banking system to a maximum of 300 pesos (equal to US\$300).”¹⁷¹ Professor Hector Maletta reports:

At the end of 2001 . . . the Argentine President resigned, the interim government declared it would not continue servicing its debts, and a widespread economic crisis ensued. The currency collapsed, banks were ordered to freeze deposits, and the nation’s output fell The crisis also caused a rise in joblessness to 26% in the wake of the enormous contraction of consumption, investment and output. After a decade of price stability, inflation returned with a rise of 40.9 percent along 2002, especially during the first half of the year, and a further 23.5% distributed along 2003-2005 Time deposits were kept frozen for a long time, and those denominated in dollars were

<http://ssrn.com/abstract=279383>; Nicolás Cachanosky & Adrián O. Ravier, *A Proposal of Monetary Reform for Argentina: Flexible Dollarization and Free Banking*, 19 INDEP. REV. 396 (2015); Gerard Caprio, Michael P. Dooley, Danny Leipziger & Carl E. Walsh, *The Lender of Last Resort Function Under a Currency Board: The Case of Argentina* (World Bank Policy Res., Working Paper No. 1648, 1996), <http://ssrn.com/abstract=620520>; Augusto De la Torre, Eduardo Levy Levy-Yeyati & Sergio L. Schmukler, *Living and Dying with Hard Pegs: The Rise and Fall of Argentina’s Currency Board* (World Bank Policy Res., Working Paper No. 2980, 2003), <http://ssrn.com/abstract=352380>; Anna Gelpern, *What Iraq and Argentina Might Learn from Each Other*, 6 CHI. J. INT’L L. 391 (2005); Guillermo E. Perry & Luis Servén, *The Anatomy of a Multiple Crisis: Why was Argentina Special and What Can We Learn From It?* (World Bank Policy Res., Working Paper No. 3081, 2003), <http://ssrn.com/abstract=636443>; Brad Setser & Anna Gelpern, *Argentina’s Pathway Through Financial Crisis* (Rutgers Sch. of L.-Newark Res. Papers No. 016; GEG Working Paper No. 2004/02), <http://ssrn.com/abstract=884225>; Horacio Spector, *Don’t Cry for Me Argentina: Economic Crises and the Restructuring of Financial Property*, 14 FORDHAM J. BANKING & FIN. L. (2009).

169. See Graciela Kaminsky, Amine Mati & Nada Choueiri, *Thirty Years of Currency Crises in Argentina: External Shocks or Domestic Fragility?* (NBER, Working Paper No. 15478, 8, 2009), <http://ssrn.com/abstract=1501503> (citing Miguel Kiguel & Pablo Andres Neumeyer, *Seigniorage and Inflation: The Case of Argentina*, 27 J. MONEY, CREDIT & BANKING 672 (1995)); Neal Ericsson & Steven Kamin, *Dollarization in Argentina* (Int’l Fin. Discussion Paper No. 460, Bd. of Govs. of the Fed. Reserve, 1993).

170. See Kaminsky et al., *supra* note 169, at 1.

171. Daniel Kostzer, *Argentina: A Case Study on the Plan Jefes y Jefas de Hogar Desocupados, or the Employment Road to Economic Recovery 2* (Levy Econ. Institute, Working Paper No. 534, 2008), <http://ssrn.com/abstract=1132772>.

forcibly converted to pesos at a loss (in dollars) of about one half of their previous worth.¹⁷²

Argentine citizens who had been assured by the government “that a peso was as good as a dollar, suddenly realized this was not the case. Not only a peso was not a dollar . . . people did not want to hold the Argentine Currency. Yet because deposits were frozen, they were unable to dispose of unwanted pesos.”¹⁷³ Thus, in December 2001, “[a]ngry Argentines remembered how high inflation during similar freezes in 1982 . . . and 1989 had robbed them of the real value of their savings.”¹⁷⁴ This 2001 currency crisis and \$80 billion default (largest ever government default at the time) resulted in Argentina being frozen out of international debt markets for the next fifteen years.¹⁷⁵

F. International Reaction is Immediate

Global reaction to the Panama Papers has been swift and too abundant to cover in great detail. However, already visible reports include: “French prosecutors disclosed they had searched the offices of Societe Generale . . . in an attempt to identify holders of offshore companies set up . . . through . . . Mossack Fonseca;”¹⁷⁶ “Peruvian authorities seized documents from the Lima office of Mossack Fonseca;”¹⁷⁷ and “El Salvador’s top prosecutor oversaw a raid on the Mossack Fonseca & Co. offices in that country Computers were seized and employees interviewed.”¹⁷⁸ Other reports state that “[i]n Venezuela journalists who investigated the Panama Papers have also been targeted by state-owned media, which accused them of selectively reporting on revelations connected to the administration of the late President Hugo Chavez.”¹⁷⁹

172. Hector E. Maletta, *A Catastrophe Foretold: Economic Reform, Crisis, Recovery and Employment in Argentina*, 1 (Sept. 2007) (unpublished manuscript) <http://ssrn.com/abstract=903124>.

173. Sebastian Edwards, *The Great Exchange Rate Debate after Argentina* (NBER, Working Paper No. 9257, 2002), <http://ssrn.com/abstract=336373>.

174. Steve H. Hanke & Kurt Schuler, *What Went Wrong in Argentina?*, 12 *CENTRAL BANKING* 43, 45 (2002).

175. See Julie Wernau, *A Record Sale for Argentina*, *WALL ST. J.*, Apr. 20, 2016, at C1.

176. See Martha M. Hamilton & Emilia Diaz-Struck, *Panama Police Raid Mossack Fonseca As Global Fallout Continues*, *THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS* (Apr. 13, 2016), <https://panamapapers.icij.org/20160413-panama-raids-mossack-fonseca.html>.

177. *Id.*

178. *Id.*

179. *Id.*

In the United States, Preet Bharara, the United States Attorney for the Southern District of New York, opened a criminal investigation into matters flowing from the Panama Papers.¹⁸⁰ *Forbes* reports that the initial reports involve 200 citizens of the United States.¹⁸¹ U.S. Senators Sherrod Brown and Elizabeth Warren wrote to seek assurances from then-Treasury Secretary Jacob Lew “that Treasury is investigating ‘any potential involvement of U.S. or U.S.-linked banks, financial service institutions, or other companies or individuals with Mossack Fonseca & Co.’”¹⁸²

British newspaper *The Guardian* reports that “[t]ax investigators from 28 countries [gathered] in Paris on [April 16, 2016] to launch an unprecedented international inquiry following publication of the Panama Papers.”¹⁸³ On the same day in Paris, the U.S. Internal Revenue Service (IRS) participated “in a ‘special project meeting’ of JITSIC, the Joint International Tax Shelter Information and Collaboration network.”¹⁸⁴ The OECD stated that the JITSIC meeting “brought together senior tax officials from more than 40 countries. They discussed opportunities for obtaining data, co-operation and information-sharing in light of the ‘Panama Papers’ revelations.”¹⁸⁵ U.S. Attorney General Loretta E. Lynch observed:

Before the Organization for Economic Co-Operation and Development (OECD) Anti-Bribery Convention was signed in 1997, there was no effective multinational framework for the prevention and prosecution of bribery. Graft was often regarded as simply the cost of doing business across borders—so much so that some OECD

180. See Martha M. Hamilton, *U.S. Prosecutor Opens Investigation Into ‘Panama Papers Matters,’* THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 21, 2016), <https://www.publicintegrity.org/2016/04/21/19584/us-prosecutor-opens-investigation-on-panama-papers-matters>.

181. See Charles Rettig, *US Launches Criminal Inquiry Into 200 US Citizens Named in the Panama Papers*, FORBES (Apr. 23, 2016), <http://www.forbes.com/sites/irswatch/2016/04/23/us-launches-criminal-inquiry-into-200-us-citizens-named-in-the-panama-papers/#11aff7dc1ebc>.

182. See Martha M. Hamilton, *‘We’re Not Going to Stop,’ Mossack Fonseca Tell Reporters*, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 8, 2016), <https://panamapapers.icij.org/blog/20160408-mossack-fonseca-interviews.html>.

183. See Holly Watt, *Panama Papers: Global Tax Officials to Launch Unprecedented Inquiry*, GUARDIAN, Apr. 12, 2016, <http://www.theguardian.com/news/2016/apr/12/panama-papers-global-tax-officials-inquiry-paris-meeting>.

184. See Josh Meyer, *IRS Urges Americans: Come Clean Now, Before We Read Panama Papers*, NBC NEWS (Apr. 17, 2016), <http://www.nbcnews.com/storyline/panama-papers/irs-urges-americans-come-clean-now-we-read-panama-papers-n557246>. See also Leandra Lederman, *The Use of Voluntary Disclosure Initiatives in the Battle Against Offshore Tax Evasion*, 57 VILL. L. REV. 499 (2012) (discussing IRS “voluntary disclosure” initiatives).

185. See Meyer, *supra* note 184.

nations permitted companies to characterize bribery as a corporate expense for tax purposes, out of a fear that otherwise, their industries wouldn't be able to compete for overseas contracts. This, of course, was the heart of the problem. Acquiescence is the very opposite of good government—hoping for right to come from what is profoundly wrong—inserts a cancer into the ethical life of a society. The results were predictable, the consequences significant.

Today, thanks in part to the tireless efforts of the OECD's Working Group on Bribery, the picture looks very different. When the convention took force in 1999, the United States was the only country with laws on the books that made it a crime to bribe foreign public officials. Today, there are 41 parties to the Anti-Bribery Convention and, as required, each of them has passed laws that both criminalize the bribery of foreign officials and ban tax deductions for such bribes . . . many countries that aren't party to the convention have adopted anti-bribery laws and even more are in the process of doing so—proving that high expectations encourage all to extend their reach beyond their grasp and seek a better way.¹⁸⁶

III. MAY 9, 2016 ICIJ DISCLOSURES

I think for anyone who's involved in these kinds of activities, the message I'd send is [that] transparency is not going to move backwards. The world is going to become only more and more transparent as we move forward. And so I would just say that be very careful and also understand that, for example, leaders in developing countries all over the world are telling us that they want to work with us at the World Bank Group very, very strongly to track down these illicit financial flows to make sure that the fair share of taxes are being paid so that many, much of these assets that are taken, you know, out literally of the hands of governments and the poor can be then reutilized for tackling poverty and inequality.

Jim Yong Kim

*World Bank Group President*¹⁸⁷

186. See Press Release, U.S. Dep't of Justice, U.S. Attorney General Loretta E. Lynch Delivers Remarks at the Organization for Economic Co-Operation and Development Anti-Bribery Ministerial Meeting, Paris (Mar. 16, 2016), <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-delivers-remarks-organization-economic-co-operation-and>.

187. See Transcript of World Bank Group President Jim Yong Kim's Opening Press Conference, 2016 WBG/IMF Spring Meetings, Washington, DC (Apr. 14, 2016), <http://www.worldbank.org/en/news/speech/2016/04/14/transcript-world-bank-group-president-jim-yong-kim-opening-press-conference>.

On May 9, 2016, the ICIJ released what is likely “the largest-ever release of information about offshore companies and the people behind them, based on data from the Panama Papers Investigation.”¹⁸⁸ The ICIJ reports that users may “search through the data and visualize the networks around thousands of offshore entities ICIJ won’t release personal data en masse; the database will not include records of bank accounts and financial transactions, emails and other correspondence, passports and telephone numbers.”¹⁸⁹ However, ICIJ member and data unit leader Mar Cabra says that the early May 2016 release includes “all the names connected to more than 200,000 offshore companies—so we’re talking about the beneficiaries, the directories, the shareholders, the intermediaries, and the addresses connected to those entities in 21 jurisdictions.”¹⁹⁰

Disclosures from the May 9, 2016 data releases include details that may result in tax-related indictments and prosecutions during months to come. While details of these disclosures are too numerous to mention in this installment, one or two may provide insight into the type of information provided. For example, the *Huffington Post* reports that “Leonard Gotshalk, a former offensive tackle for the Atlanta Falcons, reportedly paid Mossack Fonseca to set up a company in the British Virgin Islands three days after being indicted for a scheme to inflate technology stocks.”¹⁹¹ Following the May 9 disclosures, *The Washington Post* reports that Mossack Fonseca-created companies include those “tied to at least 36 Americans accused of fraud or other serious financial misconduct.”¹⁹² Among these, *The Washington Post* states, is Martin Frankel, “a Connecticut financier who pleaded guilty in 2002 to 20 counts of wire fraud . . . counts of securities fraud and racketeering conspiracy, and Andrew Wiederhorn, an Oregon corporate

188. See Marina Walker Guevara, *Coming Soon: ICIJ to Release Panama Papers Offshore Companies Data*, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 26, 2016), <https://panamapapers.icij.org/20160426-database-coming-soon.html>.

189. *Id.*

190. See Mar Cabra & Erin Kissane, *Wrangling 2.6TB of Data: The People and the Technology Behind the Panama Papers*, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 25, 2016), <https://panamapapers.icij.org/blog/20160425-data-tech-team-ICIJ.html>.

191. See Michelle Smith, *Panama Papers Leak: Donald Trump, Vladimir Putin and Others on the List*, HUFFINGTON POST (May 10, 2016), http://www.huffingtonpost.com/gobankingrates/panama-papers-leak-donald_b_9897812.html.

192. See Michael Hudson et al., *Panama Papers Include Dozens of Americans Tied to Financial Frauds*, WASH. POST., May 9, 2016, https://www.washingtonpost.com/investigations/panama-papers-include-dozens-of-americans-tied-to-financial-frauds/2016/05/09/d199bfa2-12d3-11e6-81b4-581a5c4c42df_story.html.

executive who pleaded guilty to two felonies in a case tied to one of the largest corporate scandals in Oregon history.”¹⁹³

IV. ETHICS OF GOVERNANCE: GLOBAL IMPACT ON ECONOMIC DEVELOPMENT AND REGIME STABILITY

The Panama Papers investigation unmasks the dark side of the global financial system where banks, lawyers and financial professionals enable secret companies to hide illicit corrupt money. This must stop. World leaders must come together and ban the secret companies that fuel grand corruption and allow the corrupt to benefit from ill-gotten wealth.

José Ugaz

*Chair, Transparency International*¹⁹⁴

The World Bank states that “[t]oday corruption arguably has become the most challenging obstacle to economic development.” Many scholars have focused their attention to the issues of global bribery, corruption, and the resultant impact on victimized populations.¹⁹⁵

A. *Bribery, Corruption and Extortion Defined*

Bribery, corruption, and extortion are closely related concepts. Black’s Law Dictionary defines *bribery* as “[t]he corrupt payment, receipt, or solicitation of a private favor for official action;”¹⁹⁶ *commercial bribery* as “(1) [t]he knowing solicitation or acceptance of a benefit in exchange for violating an oath of fidelity, such as that owed by an employee, partner, trustee, or attorney; [(2) omitted]; (3) [c]orrupt dealing with the agents or employees of prospective buyers to secure an advantage over business competitors.”¹⁹⁷ The World Bank defines bureaucratic or administrative *corruption* as the “intentional imposition of distortions in the prescribed implementation of existing laws, rules, and regulations to provide advantages to individuals in and/or outside government through illicit, nontransparent means. Bribes to tax

193. *Id.*

194. Press Release, The Int’l Consortium of Investigative Journalists, Transparency International Calls for Immediate Action by World Leaders to Stop Secret Companies, (Apr. 4, 2016), http://www.transparency.org/news/pressrelease/transparency_international_calls_for_immediate_action_by_world_leaders_to_s.

195. See THE MANY FACES OF CORRUPTION: TRACKING VULNERABILITIES AT THE SECTOR LEVEL, WORLD BANK 2 (J. Edgardo Campos & Sanjay Pradhan eds., 2007), <https://openknowledge.worldbank.org/bitstream/handle/10986/6848/399850REPLACEMENT101OFFICIAL0USE0ONLY1.pdf?sequence=1&isAllowed=y>.

196. *Bribery*, BLACK’S LAW DICTIONARY 80 (3rd Pocket ed. 2006).

197. *Id.* at 81.

collectors to 'reduce' one's tax liabilities are a classic example."¹⁹⁸ The World Bank also counsels that the terms *patronage* and *nepotism* "refer to favoritism shown to narrowly targeted interests by those in power in return for political support. The granting of personal favors, awarding 'sole-source' contracts, or making (unmerited) appointments to public office are examples."¹⁹⁹ In addition, the term *state capture* refers to the "actions of individuals, groups, or firms both in the public and private sectors to influence the formation of laws, regulations, decrees, and other government policies to their own advantage."²⁰⁰ *Extortion* is defined as "(1) the offense committed by a public official who illegally obtains property under the color of office; esp., an official's collection of an unlawful fee; (2) [t]he act or practice of obtaining something or compelling some action by illegal means, as by force or coercion."²⁰¹

B. Cost of Bribery and Corruption

Shortly after the Panama Papers story broke, University of California, Berkeley, Professor Gabriel Zucman told National Public Radio that the total of wealth hidden from public view or accountability vastly exceeds those associated with the Panamanian Mossack Fonseca law firm. "'You know, it's just one firm in one tax haven, and there is much more going on,' Mr. Zucman said, calculating that about eight percent of the world's financial wealth is held in tax havens. 'So that's about \$7.6 trillion today, a huge amount of wealth.'"²⁰² William J. Magnuson observes that "[p]olitical corruption can be deeply harmful to society, as it distorts government decision-making,²⁰³ delegitimizes

198. See Campos & Pradhan, *supra* note 195, at 3 (internal citations omitted).

199. *Id.*

200. *Id.* (internal citations omitted).

201. *Extortion*, BLACK'S LAW DICTIONARY (10th ed. 2014)

202. See Steven Erlanger et al., *Iceland's Prime Minister Steps Down Amid Panama Papers Scandal*, N.Y. TIMES, Apr. 5, 2016, <http://www.nytimes.com/2016/04/06/world/europe/panama-papers-iceland.html?action=click&contentCollection=World&Module=RelatedCoverage®ion+Ma>. See also GABRIEL ZUCMAN, *THE HIDDEN WEALTH OF NATIONS: THE SCOURGE OF TAX HAVENS* (U Chi. Press, 2015).

203. See William J. Magnuson, *International Corporate Bribery and Unilateral Enforcement*, 51 COLUM. J. TRANSNAT'L L. 360, 364 n.9 (2013) (citing LAWRENCE LESSIG, *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT* 226–47 (2011)) (how corruption affects legislative decision-making); Paulo Mauro, *Corruption and the Composition of Government Expenditure*, 69 J. PUB. ECON. 263 (1988) (corruption reduces government spending on education and otherwise alters the composition of government expenditure). But see FRANK ANECHIARICO & JAMES B. JACOBS, *THE PURSUIT OF ABSOLUTE INTEGRITY: HOW CORRUPTION CONTROL MAKES GOVERNMENT INEFFECTIVE* 174–85 (1996) (suggesting that the public may not benefit from prosecutions of government corruption).

political institutions,²⁰⁴ reduces administrative efficiency²⁰⁵ and slows economic growth.”²⁰⁶ *The Economist* observes that “corruption makes the world poorer and less equal. When politicians steal, they reduce the amount of public cash left over for roads or schools. When they give sweetheart contracts to their chums, they defraud taxpayers and deter honest firms from investing in their country. All this hobbles growth.”²⁰⁷ Scholars “claim that corruption reduces economic growth, via reduced private investment . . . [others] find that corruption limits development (per capita income, child mortality, and literacy). . . [while yet others] argue that corruption affects the making of economic policy.”²⁰⁸

The Wall Street Journal reports that “[r]evenue lost to tax havens is a sore point for the G-20, not only politically as it fuels voter anger, but also because many governments have limited room in their budgets to jump-start weak output . . . The OECD estimates such practices cost governments between \$100 billion and \$240 billion in lost revenue each year.”²⁰⁹ Elsewhere, the author and Kara Altenbaumer-Price have observed “that the global and domestic culture of bribery, extortion, and corruption is an amorphous cancer eating away at our societies with the very real potential to destroy commerce between nations and produce destructive global civil unrest.”²¹⁰ Alexandra Wrage, President of Annapolis, Maryland-based TRACE International, states that, when it comes to bribery, international competitors must play by the same rules to “minimize the ‘prisoners’ dilemma” because “bribery is wrong . . . uneconomical, inefficient, costly, distorting of proper incentives and outcomes, risky, and generally unprofitable. It is, in short, a poor way to

204. See Magnuson, *supra* note 203, at 364 n.10 (citing Joseph S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, 61 AM. POL. SCI. REV. 417, 422 (1967)) (corruption can lead to instability and national disintegration by destroying the legitimacy of political structures in the eyes of those who may have power to correct the situation); Susan Rose-Ackerman, *The Political Economy of Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY 31, 45 (Kimberly Ann Elliott ed., 1997).

205. See Magnuson, *supra* note 203, at 364 n.11 (citing Gerald E. Caiden & Naomi J. Caiden, *Administrative Corruption*, 37 PUB. ADMIN. REV. 301 (1977)) (effects of corruption upon administrative efficiency).

206. See Magnuson, *supra* note 203, at 364 n.12 (citing Paolo Mauro, *Corruption and Growth*, 110 Q. J. ECON. 681 (1995)) (finding that economic growth is reduced when corruption lowers private investment).

207. See *Leak of the Century*, *supra* note 37.

208. See Daniel Lederman et al., *Accountability and Corruption: Political Institutions Matter*, 17 ECON. & POL. 1, 1 (2001), <http://web.worldbank.org/archive/website00894A/WEB/PDF/ACCO UN-2.PDF>.

209. See Ian Talley, *G-20 Puts Tax Havens on Notice*, WALL ST. J., Apr. 16, 2016, at A12.

210. See Lawrence J. Trautman & Kara Altenbaumer-Price, *Lawyers, Guns and Money—The Bribery Problem and U.K. Bribery Act*, 47 INT’L LAW 481, 483 (2013).

do business.”²¹¹ Writing during 2008, professor Martine Boersma describes how in Nigeria “between 1960 and 1999, approximately US \$380 billion was lost due to corruption.”²¹² During the rule of Nigerian military dictator Sani Abacha (between 1993 and 1998), embezzlement estimates for Abacha and his inner circle “run up to US \$5 billion. Meanwhile, between 50 and 90 million Nigerians live on less than a dollar per day and the per capita income stands at merely a third of the level of 1980 . . . the country has . . . an average life-expectancy of a mere 43.7 years.”²¹³

U.S. Attorney General Loretta E. Lynch observes that “[o]ur collective failure to take a stand against bribery sowed mistrust and resentment among nations. It distorted markets and diminished prosperity. And, above all, it harmed ordinary people by increasing their cost of living, depriving them of crucial public services and eroding their faith in government institutions.”²¹⁴ Juan Pablo Bohoslavsky, a United Nations independent expert on human rights and foreign debt, says “[t]ax evasion destroys trust in public institutions and the rule of law, and shrinks the fiscal space for investing in public healthcare, education, social security and other goods and services.”²¹⁵ On another occasion Attorney General Lynch stated,

211. ALEXANDRA ADDISON WRAGE, *BRIBERY AND EXTORTION: UNDERMINING BUSINESS, GOVERNMENTS, AND SECURITY* 124 (Praeger Security International 2007). An analysis of prominent bribery cases, involving 107 publicly listed firms from 20 stock markets that have committed bribery of government officials in 52 countries worldwide during 1971–2007, concludes that their results “have numerous policy implications. Measures that promote shareholder monitoring of managers (director liability, shareholder lawsuits) may help reduce bribery. Institutions that promote transparency (democracy, freedom of the press, education, disclosure of politician sources of income), institutions that promote enforcement (police reliability), and measures that eliminate regulatory rigidities may also help reduce bribery.” Stephen Yan-Leung Cheung, Raghavendra Rau & Aris Stouraitis, *How Much Do Firms Pay as Bribes and What Benefits Do They Get? Evidence from Corruption Cases Worldwide* (24th Australasian Finance and Banking Conference 2011 Paper, 2012), <http://ssrn.com/abstract=1772246>.

212. Martine Boersma, *Catching the ‘Big Fish’? A Critical Analysis of the Current International and Regional Anti-Corruption Treaties* 3 (Nov. 14, 2008) (unpublished manuscript), <http://ssrn.com/abstract=1301602>.

213. *Id.* See also Franklin Allen et al., *Corruption and Competition* 1 (Oct. 30, 2015) (unpublished manuscript) (finding that the damaging impact of corruption on economic growth seems to differ substantially across countries, where with “large and regionally diverse countries such as China and India, rampant corruption has not slowed down growth;” although in “many African and South American countries it seems that corrupt officials severely retard growth”), <http://ssrn.com/abstract=2685219>.

214. See Press Release, *supra* note 186.

215. See Holly Watt, *Panama Papers: Global Tax Officials to Launch Unprecedented Inquiry*, *GUARDIAN* (Apr. 12, 2016), <http://www.theguardian.com/news/2016/apr/12/panama-papers-global-tax-officials-inquiry-paris-meeting>.

[W]hether in a nation or an organization, whether committed by public officials or private citizens, corruption undermines our values, diminishes confidence in our institutions and shakes the foundations of our global society.

Like many of you, I have seen firsthand how these insidious practices can strike at the core of who we are and who we aspire to be. Before becoming Attorney General, I prosecuted organized crime and public corruption cases as a United States Attorney in New York. It is, of course, the ultimate betrayal of public trust when public officials place themselves above the law, abandon their responsibilities to those whom we are all sworn to serve and seek instead to serve their own interests. I pursued elected leaders and officials accused of exploiting those they were sworn to serve. I took on international syndicates determined to subvert the rule of law. And I witnessed how profoundly their betrayal of public trust can diminish our communities and imperil our highest ideals. As you know, corruption frequently paves the way for follow-on offenses ranging from money laundering to transnational crime—and even terrorism. It destabilizes nations, causing ripple effects in neighboring regions and raising security concerns around the world. And with an estimated \$1.6 trillion in ill-gotten proceeds from criminal activity—including corruption—crossing international borders every year, it siphons badly-needed resources away from the vulnerable populations that need them most, placing innumerable lives in grave danger and wrenching poverty.²¹⁶

The scourge of corruption, according to Donnelly and Kellogg, “stretches from multinational firms in the United States, to manufacturers in China, to farmers in Latin America. It has led to water scarcity in Spain, child labor in China, illegal logging in Indonesia, unsafe medicine in Nigeria, and poorly constructed buildings in Turkey, where collapses have killed people.”²¹⁷

C. *Implications for Terrorism*

During his May 1, 2016 appearance on NBC News’ *Meet the Press*, CIA Director John Brennan stated that there are “a lot of problems in many parts of the world that the terrorists have taken advantage of. Endemic corruption, the lack of good governance, the lack of economic opportunity, the lack of government over different parts of the country

216. See Loretta E. Lynch, U.S. Attorney General, Remarks at the 20th Annual Int’l Assoc. of Prosecutors Conf. (Sept. 14, 2015), <https://www.justice.gov/opa/speech/attorney-general-loretta-e-lynch-addresses-20th-annual-international-association>.

217. Francis X. Donnelly & Sarah Kellogg, *Understanding Corruption*, GEO. WASH. BUS., Fall 2011, at 9.

where terrorists have been able to go and burrow.”²¹⁸ Assistant Attorney General Leslie R. Caldwell states:

[T]he problems affecting one nation can easily affect us all. With corruption, financial crime, money laundering and cybercrime, among others, we are faced with global challenges that require a truly global response. That is why it is essential that we continue to examine and leverage new tools to enhance our fight against transnational crime.

The increase in globalized business has drawn international corruption into the spotlight. Unfortunately, corruption is present in all countries. It makes our nation less safe, thwarts economic development, traps entire populations in poverty and leaves countries without a credible justice system. Corrupt officials who put their personal enrichment before the benefit of their citizenry create unstable countries. And as we have seen time and again, unstable countries become the breeding grounds and safe havens for terrorist groups and other criminals who threaten the security of us all.²¹⁹

D. *Who Bribes?*

D’Souza and Kaufmann report that “[b]ribery can occur at several stages during the procurement process, such as during the feasibility study, during tendering, or when determining bid eligibility; in assessing and awarding the bid; or during project implementation and/or in re-contracting.”²²⁰ Of great consequence, this corruption has the potential to “distort the overall structure of government expenditures if officials skew the allocation of resources toward sectors where graft is more lucrative and/or less prone to detection, e.g., from social services to defense.”²²¹

D’Souza and Kaufmann report about data known as the *Global Competitiveness Report* and collected from a 2006 survey of 11,232

218. John Brennan, Dir., U.S.CIA, Interview on *Meet the Press*, NBC NEWS (May 1, 2016), <http://www.nbcnews.com/feature/meet-the-press-24-7/meet-press-may-1-2016-n565516>.

219. Press Release, U.S. Dep’t of Justice, Assistant Attorney General Leslie R. Caldwell Speaks at Catholic University of Colombia on Strategic International Cooperation in Fight Against Transnational Crime, Bogata Colombia (Apr. 12, 2016), <https://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-catholic-university-colombia>.

220. Anna E. D’Souza & Daniel Kaufmann, *Who Bribes in Public Contracting and Why: Worldwide Evidence from Firms*, 14 ECON. GOV. 333, 335 (2013).

221. *Id.* (citing Andrei Shleifer & Robert W. Vishny, *Corruption*, Q. J. ECON. 599 (Aug. 1993)); Mauro, *supra* note 203; Vito Tanzi & Hamid R. Davoodi, *Corruption, Growth and Public Finances* (IMF Working Paper No. 182, 2000), <http://ssrn.com/abstract=880260>.

business managers located in 125 countries, conducted by the World Economic Forum.²²² The D'Souza and Kaufmann report reveals:

[A] large proportion of global managers admit that 'firms like theirs' pay illicit payments in order to secure government contracts.²²³ On average, approximately 32 % of managers report that firms like theirs bribe to secure a government contract; this percentage ranges from 13 % of firms based in high-income OECD countries [that report bribery] . . . [to] 50 percent in low-income countries [Public contracting is extremely lucrative. Worldwide procurement expenditures were estimated over a decade ago] to be \$4.73 trillion for OECD countries (about 20% of their aggregate GDP) and \$816 billion (about 15% of GDP) for non-OECD countries.²²⁴ [In addition,] "in public procurement projects; estimates by the OECD suggest that bribes can represent between 5 and 25 % of the total contract value in international business transactions."²²⁵

E. *Ranking of Country Business Environment Difficulty*

The Transparency International Corruption Perceptions Index 2015 (CPI) presents an indication of domestic, public sector corruption, and reveals that two-thirds of the 168 countries covered score below fifty (50), on a scale from 0 (zero), perceived to be highly corrupt—to 100 (one-hundred), perceived to be very clean.²²⁶ In discussing the *2015 Corruption Perceptions Index*, José Ugaz, Chair at Transparency International, observes that the "index clearly shows that corruption remains a blight around the world. But 2015 was also a year when people again took to the streets to protest corruption. People across the globe sent a strong signal to those in power: it is time to tackle grand corruption."²²⁷

According to TI's Corruption Perceptions Index 2015, countries comprising the most difficult business environments for corruption are as follows: of the 168 countries listed for 2015, Denmark, Finland, Sweden, and New Zealand, and Singapore, (in that order) are considered to be "very clean."²²⁸ Countries having major economic commerce or otherwise being particularly significant to the U.S. (ranked 16th) are the following: Canada (ranked 9th); the United Kingdom (ranked 10th);

222. See D'Souza & Kaufmann, *supra* note 220, at 336.

223. *Id.* at 334.

224. *Id.*

225. *Id.* (internal citations omitted).

226. *Corruption Perceptions Index 2015*, TRANSPERANCY INT'L, <http://www.transparency.org/cpi2015> (last visited Mar. 3, 2017).

227. *Id.*

228. See *id.*

Brazil (76th); China (83rd); Mexico (95th); Argentina (107th); Nigeria (136th); Pakistan (117th); Kenya (139th); Russia (119th)—and perceived to be most corrupt—Iraq (161st); Libya (161st); Angola (163rd); South Sudan (163rd); Sudan (165th); Afghanistan (166th); North Korea (167th); and Somalia (167th).²²⁹ Representing the views of more than 114,000 people in 107 countries and territories, TI's *Global Corruption Barometer* 2013 (most recent data available), discloses that “one in four people (27 percent) report having paid a bribe in the last 12 months”²³⁰ Furthermore, “reported bribes to the police have almost doubled since the 2006 Barometer, and more people report paying bribes to the judiciary and for registry and permit services than five years ago. Trust in governments and politicians is also low.”²³¹

F. Growing Intolerance for Bribery and Corruption

During recent years, Foreign Corrupt Practices Act (FCPA) enforcement activities have been brought by the DOJ and SEC in the United States.²³² Measures in other jurisdictions include the U.K. Bribery Act of 2010.²³³ Perhaps technological advances such as the widespread availability of smart phones and increased access to the Internet has fostered a sense of empowerment among populations that previously felt powerless to fight corruption and political oppression. Certainly, the increased ability to communicate displeasure about corruption has increased with greater widespread availability of individual technological devices.²³⁴

G. Arab Spring

While many causes are responsible for the Arab Spring, “[o]ne of these sources was social media and its power to put a human face on political oppression.”²³⁵ When a young vegetable merchant in Tunisia, Mohammed Bouazizi, “set himself on fire in protest of the government

229. See *id.*

230. *Global Corruption Barometer 2013*, TRANSPERANCY INT’L 3 (2013) http://www.transparency.org/whatwedo/pub/global_corruption_barometer_2013.

231. *Corruption Perceptions Index 2015*, *supra* note 226, at 83.

232. See *2015 Year-End FCPA Update*, GIBSON DUNN (Jan. 4, 2016), <http://www.gibsondunn.com/publications/documents/2015-Year-End-FCPA-Update.pdf>; Lawrence J. Trautman & Kara Altenbaumer-Price, *Foreign Corrupt Practices Act: An Update on Enforcement and SEC and DOJ Guidance*, 41 SEC. REG. L.J. 241, 249–50 (2013).

233. See Trautman & Altenbaumer-Price, *supra* note 210, at 498.

234. See *infra* Part VI.

235. Philip N. Howard et al., *Opening Closed Regimes: What Was the Role of Social Media During the Arab Spring?*, 1, 2 (Project on Information Tech. & Political Islam, Working Paper No. 2011.1, 2011), <http://ssrn.com/abstract=2595096>.

on December 17, 2010, democratic fervor spread across North Africa and the Middle East. Governments in Tunisia and Egypt soon fell, civil war broke out in Libya, and protesters took to the streets in Algeria, Morocco, Syria, Yemen, and elsewhere.”²³⁶

Richard Alderman, Director of the U.K.’s Serious Fraud Office (SFO) until April 2012, observes:

I have been following . . . the events of the Arab Spring with the very greatest of interest. I have also been looking at what has been happening recently in India, China, Russia, and other countries. When I look, in particular, at the Arab Spring I see that corruption is one of the top issues raised by the citizens of these countries as one of their main grievances against the government or, indeed in some cases, the former government. Some say that bribery is part of the culture of those countries and that we must respect it. The citizens of those countries have demonstrated very clearly to my mind that this is not part of the culture that they are prepared to accept any longer.²³⁷

Transparency International has observed, “[r]ecent events in the Middle East have brought into stark relief the desperation people felt about levels of corruption in their countries.”²³⁸ When reflecting upon the Arab Spring, Transparency International observed that “events in the Middle East have brought into stark relief the desperation people felt about levels of corruption in their countries.”²³⁹ “Egypt, Lebanon, Morocco and Palestine all suffer from unchecked executive power and lack access to information laws and whistleblower protection legislation, greatly hindering citizens’ ability to report and stop corrupt practices,” Transparency International reports.²⁴⁰ Soon after these observations, events produced regime change in Libya (1969 and 2011),²⁴¹ and Egypt (2013).²⁴²

Professors Timothy Fort and Cindy Schipani report “a nearly perfect correlation between corruption and violence in countries around

236. *Id.*

237. Trautman & Altenbaumer-Price, *supra* note 210, at 483 (citing Richard Alderman, Dir., Serious Fraud Office, U.K., Address at the Risk Advisory’s DC Dinner (Oct. 5, 2011), <http://www.riskadvisory.net/analysis/story/serious-fraud-office-director-aldermanspeaks-at-risk-advisorys-dc-dinner>)).

238. *Annual Report 2010*, TRANSPARENCY INT’L 1, 84 (2000), https://issuu.com/transparencyinternational/docs/annual_report2010?mode=window&printButtonEnabled=false&shareButtonEnabled=false&searchButtonEnabled=false&backgroundColor=%23222222.

239. *Id.*

240. *Id.*

241. See Mehrdad Payandeh, *The United Nations, Military Intervention, and Regime Change in Libya*, 52 VA. J. INT’L L. 355, 372 (2012).

242. See McDonnell, *supra* note 124, at 365.

the world. The more corrupt a regime, the more likely it was to resolve disputes through violence.”²⁴³ Moreover, “the violence doesn’t just flow from rulers,” said Fort. “Sometimes the populace is so frustrated by corrupt leaders that their resentment finally explodes in a physical act. The uprising that has spread across Arab countries began [during 2010] with resistance against the corrupt leadership of Tunisia.”²⁴⁴

H. Foreign Corrupt Practices Act (FCPA)

Much has been written during recent years about the Foreign Corrupt Practices Act (FCPA); however, I will present only a brief description here.²⁴⁵ In conjunction with comments prompted by the global reaction to the Panama Papers, President Obama observed that:

243. Timothy L. Fort, *Corruption Spawns Violence*, GW Bus, Fall 2011, at 11. See also Cindy A. Schipani & Timothy L. Fort, *Adapting Corporate Governance for Sustainable Peace*, 36 VAND. J. TRANSNAT’L L. 377 (2003); see also Cindy A. Schipani & Timothy L. Fort, *The Role of the Corporation in Fostering Sustainable Peace*, 35 VAND. J. TRANSNAT’L L. 389 (2002); Cindy A. Schipani & Timothy L. Fort, *Ecology and Violence: The Environmental Dimensions of War* (William Davidson Institute, Working Paper No. 698, 2004), <http://ssrn.com/abstract=555824>.

244. Fort, *supra* note 243, at 11.

245. See Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as amended at 15 U.S.C. §§ 78dd-1–78m); see generally Padideh Ala’i, *Civil Consequences of Corruption in International Commercial Contracts*, 62 AM. J. COMP. L. 185 (2014); Norman Bishara & David Hess, *Human Rights and a Corporation’s Duty to Combat Corruption 2* (Univ. Mich. Sch., Bus., Working Paper No. 1226, 2013), <http://ssrn.com/abstract=2388395>; Stephen J. Choi & Kevin E. Davis, *Foreign Affairs and Enforcement of the Foreign Corrupt Practices Act*, 11 J. EMPIRICAL LEGAL STUD. 409 (2014); Juscelino F. Colares, *The Evolving Domestic and International Law Against Foreign Corruption: Some New and Old Dilemmas Facing the International Lawyer*, 5 WASH. U. GLOBAL STUD. L. REV. 1 (2006); Evan Epstein, *Combate Contra la Corrupción Internacional y Enfoque en América Latina: Ley FCPA y Nuevo Programa del Departamento de Justicia de los Estados Unidos [International Anti-Corruption Efforts and Focus on Latin America: FCPA and the New DOJ Voluntary Disclosure Pilot Program]* 1 (Rock Ctr. Corp. Governance Stan. Univ., Working Paper No. 218, 2016), <http://ssrn.com/abstract=2774491>; David Hess & Cristie L. Ford, *Corporate Corruption and Reform Undertakings: A New Approach to an Old Problem*, 41 CORNELL INT’L L. J. 307 (2008); Jonathan M. Karpoff, D. Scott Lee & Gerald S. Martin, *The Value of Foreign Bribery to Bribe Paying Firms 2* (June 16, 2015) (unpublished manuscript), <http://ssrn.com/abstract=1573222>; Bruce W. Klaw, *A New Strategy for Preventing Bribery and Extortion in International Business Transactions*, 49 HARV. J. ON LEGIS. 303 (2012); Mike Koehler, *Foreign Corrupt Practices Act Statistics, Theories, Policies, and Beyond*, 56 CLEV. ST. L. REV. 157 (2016); Barbara Crutchfield George & Kathleen A. Lacey, *Investigation of Halliburton Co./TSKJ’s Nigerian Business Practices: Model for Analysis of the Current Anti-Corruption Environment on Foreign Corrupt Practices Act Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 503 (2006); William Nelson, *No Good Deed Goes Unpunished: Charitable Contributions and the Foreign Corrupt Practices Act*, 11 DEPAUL BUS. & COMM. L.J. 331 (2013); Peter Reilly, *Negotiating Bribery: Toward Increased Transparency, Consistency, and Fairness in Pretrial Bargaining Under the Foreign Corrupt Practices Act*, 10 HASTINGS BUS. L. J. 347 (2014); D. Daniel Sokol, *Policing the Firm*, 89 NOTRE DAME L. REV. 785 (2013); Elizabeth K. Spahn,

The United States was the first country to criminalize money laundering and the U.S.'s Foreign Corrupt Practices Act (FCPA) provided the model for the OECD's Anti-Bribery Convention and other efforts globally. The Department of Justice has an unparalleled commitment to, and record of, fighting corruption through law enforcement action, as reflected through six anti-corruption programs:

- public integrity prosecutions of U.S. public officials;
- prosecutions of U.S. individuals that pay bribes to foreign officials;
- prosecutions of U.S. taxpayers who seek to conceal foreign accounts, as well as bankers and advisors;
- pursuit of those who misuse the U.S. financial system through money laundering and other corrupt schemes;
- the pioneering Kleptocracy Initiative, which uses investigation and litigation to recover the proceeds of foreign official corruption and return the proceeds to the citizens of countries victimized by corruption, which has led to the restraint of more than \$1.8 billion involving 12 countries; and,
- assistance to foreign counterparts in fighting corruption, both through cooperation in foreign corruption cases and through overseas capacity building.²⁴⁶

The FCPA deals with two primary activities, bribery and improper record keeping, and prohibits: (1) the "payments of anything of value to foreign officials 'in order to assist [the payor] in obtaining or retaining

Multijurisdictional Bribery Law Enforcement: The OECD Anti-Bribery Convention, 53 VA. J. INT'L L. 1 (2012); Andrew Brady Spalding, *Unwitting Sanctions: Understanding Anti-Bribery Legislation as Economic Sanctions Against Emerging Markets*, 62 FLA. L. REV. 351 (2010); Drury D. Stevenson & Nicholas J. Wagoner, *FCPA Sanctions: Too Big to Debar?*, 80 FORDHAM L. REV. 775 (2011); Maurice E. Stucke, *In Search of Effective Ethics & Compliance Programs*, 39 J. CORP. L. 769, 773–74 (2014); Jessica Tillipman, *The Congressional War on Contractors*, 45 GEO. WASH. INT'L L. REV. 235, 239–42 (2013); Trautman & Altenbaumer-Price, *supra* note 28; David M. Uhlmann, *Deferred Prosecution and Non-Prosecution Agreements and the Erosion of Corporate Criminal Liability*, 72 MD. L. REV. 1295, 1326 (2013); Amy Deen Westbrook, *Enthusiastic Enforcement, Informal Legislation: The Unruly Expansion of the Foreign Corrupt Practices Act*, 45 GA. L. REV. 489 (2011); Joseph W. Yockey, *Solicitation, Extortion, and the FCPA*, 87 NOTRE DAME L. REV. 781 (2011).

246. Press Release, White House, Office of the Press Sec'y, Fact Sheet: Obama Admin. Announces Steps to Strengthen Fin. Transparency, and Combat Money Laundering, Corruption, and Tax Evasion (May 5, 2016), <https://www.whitehouse.gov/the-press-office/2016/05/05/fact-sheet-obama-administration-announces-steps-strengthen-financial>.

business for or with, or directing business to, any person;”²⁴⁷ and (2) “failing to keep records and books ‘which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.’”²⁴⁸ “When the FCPA is read as a whole, its core of criminality is seen to be bribery of a foreign official to induce him to perform an official duty in a corrupt manner.”²⁴⁹

Virtually every company is subject to the statute’s prohibitions, whether public or private, as well as every person that touches the United States. Four categories of actors are involved: (1) “‘issuers’²⁵⁰ (public companies);” (2) “any business with its principal place of business in the United States or that is organized under the laws of any state, territory, possession, or commonwealth of the United States (private companies);”²⁵¹ (3) “United States citizens, nationals, and residents;” and (4) “‘other persons who take any act in furtherance of the corrupt payment while within the territory of the United States.’”²⁵² “‘Issuers’ are ‘companies whose securities are registered in the United States or that are required to file periodic reports with the SEC.’”²⁵³ Actions by both issuers and domestic concerns are subject to the FCPA’s anti-bribery provisions anywhere in the world.²⁵⁴

U.S. Attorney General Loretta E. Lynch reports that “[s]ince 2009, the U.S. Department of Justice has brought more than 60 criminal cases against individuals and more than 60 cases against corporations in connection with foreign bribery charges, resulting in the collection of more than \$4 billion in penalties.”²⁵⁵ In addition, “our colleagues at the U.S. Securities and Exchange Commission, or SEC, have brought actions against more than 85 companies and approximately 35 individuals,

247. Trautman & Altenbaumer-Price, *supra* note 28, at 149 (citing 15 USC § 78dd-1(a)(1)(B) (2012)).

248. *Id.* (citing 15 USC § 78m (b)(2)(A) (2012)).

249. *Id.* (citing *United States v. Kay*, 359 F.3d 738, 761 (5th Cir. 2004)).

250. *Id.* Issuers include both U.S. public companies, as well as foreign companies whose shares trade on U.S. exchanges. As “an example, the department recently prosecuted Siemens AG, a major German multinational firm. It is a German company, but its shares trade on the New York Stock Exchange, which makes it a foreign issuer and therefore subject to the FCPA.” *Frontline: Black Money* (PBS television broadcast, Apr. 7, 2009), Interview with Mark F. Mendelsohn, former Deputy Chief, Fraud Section, Criminal Div., U. S. Dep’t of Justice, <http://www.pbs.org/wgbh/pages/frontline/blackmoney/interviews/mendelsohn.html>.

251. Trautman & Altenbaumer-Price, *supra* note 28, at 149 (noting that such companies are referred to as “domestic concerns” under the statute 15 U.S.C. § 78dd-2(h) (2012)).

252. *Id.* at 150 (citing 15 U.S.C. § 78dd-2(h) (2012)).

253. *Id.* (citing Aaron G. Murphy, *Practitioner Note: The Migratory Patterns of Business in the Global Village*, 2 N.Y.U. J.L. & BUS. 229, 237, (2005)).

254. *Id.* (citing Murphy, *supra* note 253, at 237).

255. Press Release, *supra* note 186.

resulting in fines, disgorgement and prejudgment interest of about \$2.5 billion," during that same period of time.²⁵⁶

I. VimpelCom

The DOJ and SEC point to reaching, under the FCPA, a recent criminal resolution with telecommunications giant VimpelCom (the world's sixth-largest).²⁵⁷ Under the terms of this resolution:

VimpelCom admitted to conspiring to pay more than \$114 million in bribes to a government official in Uzbekistan; it agreed to pay the United States a penalty of more than \$230 million; and it consented to submit to an independent compliance monitor. In addition to our criminal proceedings against VimpelCom, we have also filed civil complaints seeking the forfeiture of more than \$850 million in funds traceable to the attempt to bribe the Uzbek official.²⁵⁸

J. Growth in Anti-Corruption Treaties

Professor Martine Boersma reports that, "for many years, the US was the only country prohibiting bribery of public officials abroad. Given the idea that this lonely stance harmed US corporations, the 1988 amendments to the FCPA . . . called upon the US President to lobby for internationalisation of the FCPA within the context of the OECD."²⁵⁹ 20 years after passage of the FCPA (1997), "pressure by the Clinton Administration resulted in the adoption of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions"²⁶⁰ The adoption of international and regional anti-corruption treaties followed during the mid-1990s:

and the majority of those contain provisions on the criminalization of active foreign bribery. This means that many countries that are a party to the anti-corruption treaties are now under the obligation as well to criminalize active foreign bribery by their MNCs and citizens, although it is by no means certain that the legal provisions on this issue are actively enforced.²⁶¹

While detailed treatment of the recent corruption treaty landscape is beyond the scope of this paper, important developments include: the monitoring schematic found in the Report of Buenos Aires (2001) peer

256. *Id.*

257. *Id.*

258. *Id.*

259. Boersma, *supra* note 212, at 9.

260. *Id.*

261. *Id.*

review *MESICIC* follow-up procedure;²⁶² European Union *PFI Convention* (1995), *First Protocol* (1996) and *Second Protocol* (1997);²⁶³ the Council of Europe *Criminal Law Convention on Corruption* (1999) and (2003);²⁶⁴ African Instruments such as the *SADC Protocol Against Corruption* (2001);²⁶⁵ *ECOWAS Protocol on the Fight Against Corruption* (2001);²⁶⁶ and *African Union Convention on Preventing and Combating Corruption* (2003);²⁶⁷ and UK Bribery Act (2010).²⁶⁸

K. Kleptocracy Asset Recovery Initiative

The DOJ's efforts to return assets stolen by corruption to those individuals harmed includes the 2010 launch of the Kleptocracy Asset Recovery Initiative, to date responsible for the recovery of "approximately \$63 million in bribery proceeds and embezzled funds asset forfeiture actions against VimpelCom . . . the 2014 forfeiture of \$480 million embezzled by Nigerian dictator Sani Abacha and his associates—the largest forfeiture the Department of Justice has ever secured through a kleptocracy action and which is now on appeal."²⁶⁹ The DOJ points to other successful efforts with international partners, where "we recovered and repatriated more than \$115 million for the Kazakh people. We helped our South Korean allies recover almost \$28 million in bribery proceeds; we recouped \$22 million for the people of Peru; and we recovered more than \$3 million for the people of Nicaragua."²⁷⁰

V. TAX EVASION DEFINED

For fifty years, executive, legislative, and judicial branches around the globe have utterly failed to address the metastasizing tax havens spotting Earth's surface Banks, financial regulators and tax authorities have failed. Decisions have been made that have spared the wealthy while focusing instead on reining in middle- and low-income citizens.

John Doe

Author, "The Revolution Will Be Digitized"

262. *Id.* at 13–15.

263. *Id.* at 15–16.

264. *Id.* at 23–24.

265. *Id.* at 26–27.

266. *Id.* at 28.

267. *Id.* at 28–31.

268. See generally Trautman & Altenbaumer-Price, *supra* note 210.

269. Press Release, *supra* note 186.

270. *Id.*

*International Consortium of Investigative Journalists*²⁷¹

A. *Tax Definitions*

We are indebted to Professor Stuart Green for his following definitions: *tax* means “a compulsory, non-punitive exaction of money from a private person or entity by a public authority for public purposes.”²⁷² The various types of tax include: “income tax, consumption tax, corporate tax, capital gains tax, property tax, sales tax, inheritance tax, value added tax, excise tax, poll tax, tariffs, tolls, and transfer tax.”²⁷³ The term *tax evasion* has been defined to mean “the unlawful and intentional nonpayment or avoidance of tax owed.”²⁷⁴ U.S. federal law

distinguishes between the willful nonpayment of taxes or failure to file a return, both of which are generally treated as a misdemeanor under I.R.C. § 7203; and tax evasion proper, which carries a penalty of five years in prison under § 7201, and requires not only the willful nonpayment of taxes but also some additional concealment of one’s activities.²⁷⁵

The above forms of illegality are distinguishable from *tax mitigation* or *avoidance*, “which consists of using *legal* means to reduce the amount of taxes owed”²⁷⁶

A detailed discussion about the ethics of tax evasion is beyond the scope of this paper. However, Professor Robert W. McGee has observed that “[t]he ethics of tax evasion can be examined from a number of perspectives,” including: a practitioner or legal perspective, “philosophical approach . . . various religious, secular, and philosophical perspectives . . . from an ethical perspective Another possibility is that there is no duty to pay.”²⁷⁷ Professor McGee observes that in a few studies “the focus of the discussion is on government corruption and the

271. John Doe, *Panama Papers Source Offers Documents to Governments, Hints At More To Come*, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (May 6, 2016), <https://panamapapers.icij.org/20160506-john-doe-statement.html>.

272. See Stuart P. Green, *What is Wrong With Tax Evasion?*, 9 HOUS. BUS. & TAX L.J. 220, 221 (2009).

273. *Id.*

274. *Id.*

275. *Id.* (citing I.R.C. § 7203 (2003); *Id.* § 7201.)

276. *Id.* (emphasis added).

277. Robert W. McGee, *Four Views on the Ethics of Tax Evasion*, in THE ETHICS OF TAX EVASION: PERSPECTIVES IN THEORY AND PRACTICE 3, 4 (New York: Springer, 2012).

reasons why the citizenry does not feel any moral duty to pay taxes to such a government.”²⁷⁸

VI. TECHNOLOGY MEANS SECRECY IS NOT SECRET ANYMORE

[W]e live in a time of inexpensive, limitless digital storage and fast internet connections that transcend national boundaries. It doesn’t take much to connect the dots: from start to finish, inception to global media distribution, the next revolution will be digitized. Or perhaps it has already begun.

John Doe

Author, “The Revolution Will Be Digitized”

*International Consortium of Investigative Journalists*²⁷⁹

The ability to search and extract useful information from such a huge amount of unstructured data (2.6 terabytes, 11.5 million files) is a daunting task that may not have been possible just a few years ago. However, technological advances have assisted in researching “the variety of file types (from spreadsheets, emails and PDFs to obscure and old formats no longer in use), and the logistics of making it all securely searchable for more than 370 journalists around the world are just a few of the hurdles faced”²⁸⁰

A. Technology and the Battle Between the “Haves and “Have Nots”

To paraphrase Harvard Professor Lawrence Lessig, code is law, and he who writes the code controls the laws.²⁸¹ A prominent message from the Panama Papers, Wikileaks,²⁸² and Edward Snowden disclosures²⁸³ is

278. *Id.*; see also Robert W. McGee, *Is Tax Evasion Unethical?*, 42 KAN. L. REV. 411 (1994).

279. Doe, *supra* note 271.

280. See Mar Cabra & Erin Kissane, *Wrangling 2.6TB of Data: The People and the Technology Behind the Panama Papers*, THE INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Apr. 25, 2016), <https://panamapapers.icij.org/blog/20160425-data-tech-team-ICIJ.html>.

281. See LAWRENCE LESSIG, *CODE: AND OTHER LAWS OF CYBERSPACE*, VERSION 2.0 at 6 (Basic Books 2006).

282. See generally Marvin Ammori, *The ‘New’ New York Times: Free Speech Lawyering in the Age of Google and Twitter*, 127 HARV. L. REV. 2259 (2014); Jack M. Balkin, *The First Amendment is an Information Policy*, 41 HOFSTRA L. REV. 1 (2012); Heidi Kitrosser, *Free Speech Aboard the Leaky Ship of State: Calibrating First Amendment Protection for Leakers of Classified Information*, 6 J. NAT’L SEC. L. & POL’Y 409 (2013); Derek E. Bambauer, *Consider the Censor*, 1 WAKE FOREST J. L. & POL’Y 31 (2011); Jerome A. Barron, *The Pentagon Papers Case and the Wikileaks Controversy: National Security and the First Amendment*, 1 WAKE FOREST J. L. & POL’Y 49 (2011); Patricia L. Bellia, *WikiLeaks and the Institutional Framework for National Security Disclosures*, 121 YALE L.J. 1448 (2012); Jeffrey S. Brand, *Eavesdropping on Our*

Founding Fathers: How a Return to the Republic's Core Democratic Values Can Help Us Resolve the Surveillance Crisis, 6 HARV. NAT'L SEC. J. 1 (2015); Gabriel J. Michael, *Who's Afraid of Wikileaks? Missed Opportunities in Political Science Research*, 32 REV. POL'Y RES. 175 (2015); Adam D. Moore, *Privacy, Security, and Government Surveillance: Wikileaks and the New Accountability*, 25 PUB. AFFAIRS Q. (2011); Mark Fenster, *Disclosure's Effects: Wikileaks and Transparency*, 97 IOWA L. REV. 753 (2012); David Pozen, *The Leaky Leviathan: Why the Government Condemns and Condone Unlawful Disclosures of Information*, 127 HARV. L. REV. 512 (2013); Alasdair S. Roberts, *WikiLeaks: The Illusion of Transparency*, INT'L REV. ADMIN. SCI. (2012); Christina E. Wells, *Contextualizing Disclosure's Effects: Wikileaks, Balancing and the First Amendment*, 97 IOWA L. REV. BULL. 51 (2012).

283. See generally Susan Ariel Aaronson, *Why Trade Agreements Are Not Setting Information Free: The Lost History and Reinvigorated Debate over Cross-Border Data Flows, Human Rights and National Security*, 14 WORLD TRADE REV. 671 (2015); Shawn Marie Boyne, *An Overview of U.S. Whistleblowing Law*, (Indiana University Robert H. McKinney School of Law Research Paper No. 2013-38, 2013), <http://ssrn.com/abstract=2343590>; Ian Brown & Douwe Korff, *Foreign Surveillance: Law and Practice in a Global Digital Environment*, 3 EUR. HUM. RTS. L. REV. 243 (2014); Bryce Clayton Newell & Joseph T. Tennis, *Me, My Metadata, and the NSA: Privacy and Government Metadata Surveillance Programs*, PROCEEDINGS OF THE 2014 ICONFERENCE 345 (2014); Ashley Deeks, *An International Legal Framework for Surveillance*, 55 VA. J. INT'L L. 291 (2015); David G. Delaney, *Cybersecurity and the Administrative National Security State: Framing the Issues for Federal Legislation*, 40 J. LEGIS. 251 (2013-14); David Eargle, Anthony Vance & Paul Benjamin Lowry, *How Moral Intensity and Impulsivity Moderate the Influence of Accountability on Access Policy Violations in Information Systems*, 2013 INT'L CONF. INFO. SYS. (ICIS 2013), Milan, Italy (2013), <http://ssrn.com/abstract=2529609>; Jon Garon, 2015 Cyberlaw Year in Review—Seeking Security Over Privacy, Finding Neither (Dec. 23, 2015) (unpublished manuscript), <http://ssrn.com/abstract=2707756>; Jonah Force Hill, *The Growth of Data Localization Post-Snowden: Analysis and Recommendations for U.S. Policymakers and Business Leaders*, THE HAGUE INST. FOR GLOBAL JUST., CONF. ON THE FUTURE OF CYBER GOVERNANCE (2014), <http://ssrn.com/abstract=2430275>; Andrew Hiltz & Christopher A. Parsons, *Half Baked: The Opportunity to Secure Cookie-Based Identifiers from Passive Surveillance* (2015), <http://ssrn.com/abstract=2640610>; Margaret Hu, *Taxonomy of the Snowden Disclosures*, 72 WASH. & LEE L. REV. 1679 (2015); Sarah Jane Hughes, *Did the National Security Agency Destroy the Prospects For Confidentiality and Privilege When Lawyers Store Clients' Files in the Cloud—And What, If Anything, Can Lawyers and Law Firms Realistically Do in Response?*, 41 N. KY. L. REV. 405 (2014); Margaret B. Kwoka, *Leaking and Legitimacy*, 48 U.C. DAVIS L. REV. 1387 (2015); Jack I. Lerner, Michael Frank, Michelle Lee & Diana Wade, *The Duty of Confidentiality in the Surveillance Age*, 17 J. INTERNET L. 1 (2014); Peter Margulies, *Dynamic Surveillance: Evolving Procedures in Metadata and Foreign Content Collection After Snowden*, 66 HASTINGS L.J. 1 (2014); Marko Milanovic, *Human Rights Treaties and Foreign Surveillance: Privacy in the Digital Age*, 56 HARV. INT'L L.J. 81 (2015); Joseph D. Mornin, *NSA Metadata Collection and the Fourth Amendment*, 29 BERKELEY TECH. L.J. 985 (2014); Nora Ni Loideain, *EU Law and Mass Internet Metadata Surveillance in the Post-Snowden Era* (University of Cambridge Centre for Research in the Arts, Social Sciences and Humanities, Research Paper No. 32/2015 2015), <http://ssrn.com/abstract=2613424>; Stephanie K. Pell & Christopher Soghoian, *A Lot More than a Pen Register, and Less than a Wiretap: What the Stingray Teaches Us About How Congress Should Approach the Reform of Law Enforcement Surveillance Authorities*, 16 YALE J. L. & TECH. 134 (2013-14); Ira Rubinstein, Gregory Nojeim & Ronald D. Lee, *Systematic Government Access to Personal Data: A Comparative Analysis*, 4 INT'L DATA PRIV. L. 96 (2014); Melanie D. Wilson, *Anti-Justice*, 81 TENN. L.

that greater forced-transparency appears to be a global trend, even among the more affluent and technologically-advanced societies. Our attempt to understand and analyze the facts leading up to the Panama Papers disclosures is still in its infancy. As of this date, it remains unclear whether release of the 11.5 million documents is attributable to an insider-whistleblower or is the result of a computer hack. However, the recent successful hacking trend of highly sensitive information should create apprehension about the security of similar documents located at other law firms throughout the world.²⁸⁴ The vulnerability of highly sensitive financial data at some of the largest and most prestigious law firms has been noted within recent months.²⁸⁵

B. Networked, Encrypted, Instant, Widespread Communication

An example of how social media is proving to be a highly productive tool in fighting corruption is found in the efforts of 39 year-old father of two, Russian anti-corruption activist Alexey Navalny, who has gained a following by posting “his suspicions, along with political

REV. 699 (2014); Christopher S. Yoo, *Cyber Espionage or Cyberwar?: International Law, Domestic Law, and Self-Protective Measures*, in CYBERWAR: LAW AND ETHICS FOR VIRTUAL CONFLICTS (Jens David Ohlin, Kevin Govern, Claire Finkelstein, eds., 2015); Sarah Myers West, Note, Globalizing Internet Governance: Negotiating Cyberspace Agreements in the Post-Snowden Era, 2014 TPRC Conference Paper, <http://ssrn.com/abstract=2418762>.

284. See generally Lawrence J. Trautman, *Cybersecurity: What About U.S. Policy*, 2015 U. ILL. J.L. TECH. & POL’Y 341 (2015); Lawrence J. Trautman & George P. Michaely, *The SEC & The Internet: Regulating the Web of Deceit*, 68 CONSUMER FIN. L.Q. REP. 262 (2014); Lawrence J. Trautman, Jason Triche & James C. Wetherbe, *Corporate Information Governance Under Fire*, 8 J. STRAT. & INT’L STUD. 105 (2013); Lawrence J. Trautman & Kara Altenbaumer-Price, *The Board’s Responsibility for Information Technology Governance*, 28 J. MARSHALL J. COMPUTER & INFO. L. 313 (2011); Lawrence J. Trautman, *E-Commerce and Electronic Payment System Risks: Lessons from PayPal*, 16 U.C. DAVIS BUS. L.J. 261 (2016); Lawrence J. Trautman, *Managing Cyberthreat*, 33 SANTA CLARA COMPUTER & HIGH TECH. L.J. 230 (2016); Lawrence J. Trautman, *Congressional Cybersecurity Oversight: Who’s Who & How It Works*, 5 J.L. & CYBER WARFARE 147 (2016); Lawrence J. Trautman, *Is Cyberattack The Next Pearl Harbor?*, 18 N.C. J.L. & TECH. 232 (2016); Lawrence J. Trautman & Peter C. Ormerod, *Corporate Directors’ and Officers’ Cybersecurity Standard of Care: The Yahoo Data Breach*, 66 AM. U. L. REV. (forthcoming 2017); Lawrence J. Trautman & Peter C. Ormerod, *Industrial Cyber Vulnerabilities: Lessons from Stuxnet and the Internet of Things* (unpublished manuscript) (on file with authors); BeauHD, *Outdated and Vulnerable Wordpress, Drupal Versions Contributed to Panama Papers Breach*, SLASHDOT (Apr. 6, 2016, 7:28 PM), <https://news.slashdot.org/story/16/04/07/008230/outdated-and-vulnerable-wordpress-drupal-versions-contributed-to-panama-papers-breach>.

285. See Nicole Hong & Robin Sidel, *Hackers Hit Cravath, Weil Gotshal*, WALL ST. J., Mar. 30, 2016, at C1.

and cultural commentary, online at navalny.livejournal.com . . .²⁸⁶
 Harvard Professors Paul M. Healy and Karthik Ramanna report that:

Navalny started tracking other Russian companies, particularly state-owned petroleum corporations, and found suspicious patterns in their procurement practices. For instance, in December 2008 Navalny announced that he had uncovered a deal in which Gazprom purchased gas from a small company, Novatek, through an intermediary, Transinvestgas. He learned that, just a few days earlier, Gazprom had declined to buy the same gas directly from Novatek for a third of the price it ultimately paid. An official investigation later revealed that Transinvestgas had channeled the roughly US\$10 million it made on the deal to a shell company, presumably so that someone could collect a kickback.²⁸⁷

With a string of corruption disclosures to his credit, “Navalny began to receive international recognition for his work. Awarded a Yale World Fellowship in 2010, he used his new bully pulpit in New Haven to publish the charge that Transneft’s management had siphoned off US\$4 billion from a trans-Siberian oil-pipeline construction project.”²⁸⁸ The Transneft disclosure “prompted a flood of e-mail from Russian netizens, who pointed Navalny to equally bizarre deals.”²⁸⁹

By examining two case studies of Russian social media corruption disclosures, Professor Florian Toepfl adds to our knowledge about the complex interaction between new media, power, and scandal.²⁹⁰ Toepfl finds that “Russia’s ruling elites are currently very much capable of managing public outrage arising from the new sphere of social media according to their specific political aims.”²⁹¹

Scandals emanating from the new sphere of social media can be both beneficial and detrimental to the democratization of authoritarian

286. See Paul M. Healy & Karthik Ramanna, *When the Crowd Fights Corruption*, 91 HARV. BUS. REV. 1 (2013); see also The Blog of Navalny in English, <http://navalny-en.livejournal.com/> (last viewed Mar. 4, 2017).

287. Healy & Ramanna, *supra* note 286.

288. *Id.*

289. *Id.*

290. See Florian Toepfl, *Managing Public Outrage: Power, Scandal, and New Media in Contemporary Russia*, 13 NEW MEDIA & SOC’Y 1301 (2011).

291. *Id.* at 1314; see also Sandra Cortesi et al., *Digitally Connected: Global Perspectives on Youth and Digital Media* (Berkman Center Research, Publication No. 2015-6, 2015), <http://ssrn.com/abstract=2585686> (discussing inequitable access, risks to safety and privacy, civic engagement and innovation); Bruce Etling, Robert Faris, John G. Palfrey, *Political Change in the Digital Age: The Fragility and Promise of Online Organizing* (Berkman Center Research, Publication No. 2010-15, 2010) (advocating that more attention should be paid to the means of overcoming the difficulties of online organization in the face of authoritarian governments in an increasingly digital geopolitical environment), <http://ssrn.com/abstract=1871316>.

regimes. Yet, it seems obvious that in recent years, ‘ground swells of public conversation around politically inflammatory topics’ have been among the severest challenges to political elites in non-democratic regimes that emanated from the new networked spheres of social media.²⁹²

A number of other studies have investigated the Internet’s impact on Russian politics, media and society.²⁹³ Harvard’s Berkman Center for Internet and Society continues to produce valuable scholarship exploring the impact of technology on the peoples of the world.²⁹⁴

Social media success in fighting corruption is also reported in India, where Bangalore-based IPaidABribe.com provides a platform where “[a]nonymous users can disclose the nature, amount and recipients of the bribes they have paid; report if a bribe wasn’t demanded where it was expected; or share experiences when they forestalled a bribe by arguing or protesting.”²⁹⁵ IPaidABribe.com reports that during its first six months of operation, “the website received 250,000 hits and logged 5,000 bribery reports.”²⁹⁶

VII. IMPLICATIONS FOR FUTURE RESEARCH

Disclosures contained in the Panama Papers about illicit gains derived from global corruption far exceed the amount of space allotted for a single law journal article. As a result, the research and writing challenge for this author has been to strictly edit background materials to make room for inclusion of important new disclosures, often at the cost of information helpful to the reader. Therefore, a substantial amount of text has been reserved for future installments. Ample subject matter

292. See Toepfl, *supra* note 290, at 1316 (quoting Rebecca MacKinnon, *China’s Censorship 2.0: How Companies Censor Bloggers*, FIRST MONDAY (Feb. 2, 2009), <http://firstmonday.org/ojs/index.php/fm/article/view/2378/2089>).

293. See Karina Alexanyan et al., *Exploring Russian Cyberspace: Digitally-Mediated Collective Action and the Networked Public Sphere* (Berkman Center Research, Publication No. 2012-2, 2012), <http://ssrn.com/abstract=2014998>; Bruce Etling et. al., *Public Discourse in the Russian Blogosphere: Mapping RuNet Politics and Mobilization* (Berkman Center Research, Publication No. 2010-11, 2010), <http://ssrn.com/abstract=1698344>; John Kelly et al., *Mapping Russian Twitter* (Berkman Center Research, Publication No. 2012-3, 2012), <http://ssrn.com/abstract=2028158>.

294. See Urs Gasser et al., *Internet Monitor 2014: Reflections on the Digital World: Platforms, Policy, Privacy, and Public Discourse* (Berkman Center Res, Publication No. 2014-17, 2014), <http://ssrn.com/abstract=2538813>; Urs Gasser et al., *Online Security in the Middle East and North Africa: A Survey of Perceptions, Knowledge and Practice* (Berkman Center Research, Publication No. 2011-04, 2011), <http://ssrn.com/abstract=1942857>; Hal Roberts et al., *The Evolving Landscape of Internet Control: A Summary of Our Recent Research and Recommendations* (Berkman Center Research, Publication No. 2011-05, 2011), <http://ssrn.com/abstract=1942856>.

295. Healy & Ramanna, *supra* note 286.

296. *Id.*

remains for research, including: an analysis of the impact and sufficiency of pending tax treaties; proposed amendments to the Bank Secrecy Act; impact of the Foreign Account Tax Compliance Act; enforcement and impact of the Report of Foreign Bank Account (FBAR); proposed rules regarding disclosure of beneficial ownership, “disregarded entities;” proposed legislation to enhance and strengthen efforts to combat transnational corruption; effective ways to fight money laundering, terrorist finance and tax evasion; proposed “Reciprocal Foreign Account Tax Compliance Act (FATCA)” legislation; and exploration of where we go from here. Keeping up with rapid technological change will continue to challenge legislators worldwide.²⁹⁷

VIII. CONCLUSION

While disclosures thus far from the Panama Papers are likely to be little more than the tip of the iceberg, some preliminary conclusions can still be drawn. We are persuaded by comments made by World Bank Group President Jim Yong Kim when he says, “transparency is not going to move backwards. The world is going to become only more and more transparent as we move forward.”²⁹⁸ Already, legal authorities around the world have instituted investigations based on these disclosures. Criminal prosecutions and public outrage at revelations about widespread corruption seem highly probable. Whether continued regime change and political instability results is yet to be seen. When it comes to combating bribery, corruption, and tax evasion, it is possible that in the fullness of time, the Panama Papers may become viewed as the gift that keeps on giving.

297. Lawrence J. Trautman & Alvin Harrell, *Bitcoin Versus Regulated Payment Systems: What Gives?*, 38 CARDOZO L. REV. 1041 (2017); Lawrence J. Trautman, *Is Disruptive Blockchain Technology the Future of Financial Services?*, 69 C.F. L. Q. R. 232 (2016); Lawrence J. Trautman, *Virtual Currencies: Bitcoin & What Now After Liberty Reserve, Silk Road, and Mt. Gox?*, 20 RICH. J. L. & TECH. 13 (2014).

298. See Transcript of World Bank Group President Jim Yong Kim’s Opening Press Conference, 2016 WBG/IMF Spring Meetings, Washington, DC (Apr. 14, 2016), <http://www.worldbank.org/en/news/speech/2016/04/14/transcript-world-bank-group-president-jim-yong-kim-opening-press-conference>.

IX. APPENDIX ONE: MOSSACK FONSECA STATEMENT REGARDING RECENT MEDIA COVERAGE

Statement Regarding Recent Media Coverage

Recent media reports have portrayed an inaccurate view of the services that we provide and, despite our efforts to correct the record, misrepresented the nature of our work and its role in global financial markets.

These reports rely on supposition and stereotypes, and play on the public's lack of familiarity with the work of firms like ours. The unfortunate irony is that the materials on which these reports are based actually show the high standards we operate under, specifically that:

- we conduct due diligence on clients at the outset of a potential engagement and on an ongoing basis;
- we routinely deny services to individuals who are compromised or who fail to provide information we need in order to comply with “know your client” obligations or when we identify other red flags through our due diligence;
- we routinely resign from client engagements when ongoing due diligence and/or updates to sanctions lists reveals that a party to a company for which we provide services been either convicted or listed by a sanctioning body;
- we routinely comply with requests from authorities investigating companies or individuals for whom we are providing services; and
- we work with established intermediaries, such as investment banks, accountancies and law firms, as part of the regulated global financial system. We would like to take this opportunity to address some specific misconceptions about our work and clarify the inaccuracies that are rife in the recent media reports.

We provide company incorporation and related administrative services that are widely available and commonly used worldwide.

Incorporating companies is the normal activity of lawyers and agents around the world. Services such as company formations, registered agent, and others are frequently used and provided in many worldwide jurisdictions, including the United States and the United Kingdom.

Moreover, it is legal and common for companies to establish commercial entities in different jurisdictions for a variety of

legitimate reasons, including conducting cross-border mergers and acquisitions, bankruptcies, estate planning, personal safety, and restructurings and pooling of investment capital from investors residing in different jurisdictions who want a neutral legal and tax regime that does not benefit or disadvantage any one investor.

Our registered agent and corporate secretarial services are limited to a narrow set of administrative services.

These services are related to facilitating document filings before the authorities and registry of a company's jurisdiction, and helping a company register for taxes and file for licenses, manage patents and trademarks, file tax returns and other documentation.

The resident agent is not involved in managing the business in any way. We do not open or manage accounts, take custody of money or assets (aside from fees paid to us for our services), monitor transactions, perform audits, advise on transactions or have discretionary authority to make decisions on behalf of the companies for which we serve as registered agents or for which we perform corporate secretarial services.

Our services are regulated on multiple levels, often by overlapping agencies, and we have a strong compliance record.

Our business is regulated by several different oversight and enforcement agencies, including the Banking Superintendence of Panama and the Intendancy of Non-financial Regulated Services Providers. We are also subject to regulatory oversight and enforcement in all of the other jurisdictions where we incorporate companies. In addition, we have always complied with international protocols such as the Financial Action Task Force (FATF) and, more recently, the U.S. Foreign Account Tax Compliance Act (FATCA) to assure as is reasonably possible, that the companies we incorporate are not being used for tax evasion, money laundering, terrorist finance or other illicit purposes.

The FATF, in particular, praised Panama in its February 2016 plenary session, saying specifically that Panama has made "significant progress in improving its AML/CFT (anti-money laundering and combating the financing of terrorism) regime." The FATF, subsequent to the plenary session, removed Panama from its "gray list" of uncooperative jurisdictions.

We are responsible members of the global financial and business community.

We conduct thorough due diligence on all new and prospective clients that often exceeds in stringency the existing rules and standards to which we and others are bound. Many of our clients

come through established and reputable law firms and financial institutions across the world, including the major correspondent banks, which are also bound by international “know your client” (KYC) protocols and their own domestic regulations and laws.

If a new client/entity is not willing and/or able to provide to us the appropriate documentation indicating who they are, and (when applicable) from where their funds are derived, we will not work with that client/entity. Indeed, the documents cited in the media reports show that we routinely deny services to individuals who are compromised or who fail to provide information we need in order to comply with our KYC and other obligations.

Our due diligence procedures require us to update the information that we have on clients and to periodically verify that no negative results exist in regards to the companies we incorporate and the individuals behind them. Again, the documents cited in the media reports show that we routinely resign from client engagements when ongoing due diligence and updates to sanctions lists reveal that a beneficial owner of a company for which we provide services is compromised.

For 40 years Mossack Fonseca has operated beyond reproach in our home country and other jurisdictions where we have operations.

Our firm has never been accused or charged in connection with criminal wrongdoing.

However, we are legally and practically limited in our ability to regulate the use of companies we incorporate or to which we provide other services. We are not involved in managing our clients’ companies. Excluding the professional fees we earn, we do not take possession or custody of clients’ money, or have anything to do with any of the direct financial aspects related to operating their businesses.

We operate in jurisdictions with increasingly stringent financial and legal controls.

All of the jurisdictions where we have operations have made significant strides in their efforts to comply with global protocols to prevent abuse of their financial and corporate systems. This includes preventing money laundering, combating terrorist financing and preventing tax evasion.

Most of the jurisdictions have formal tax information exchange agreements with several countries that are approved by the Organization for Economic Cooperation and Development (OECD). Panama has nine formal OECD-approved tax information exchange agreements, including with the United States and Canada, and 16

double taxation agreements (which include provisions for information sharing between authorities). The OECD has recognized Panama for improving the government's access to information about beneficial ownership of entities incorporated in its jurisdiction as well as for improving the sharing of such information with authorities in other jurisdictions.

To quote from the OECD's most recent peer review of Panama: "The 2014 Supplementary Agreement noted the significant progress made by Panama in expanding its exchange of information network since the 2010 Phase 1 Report, which bought the number of signed EOI (exchange of information agreements) agreements from one to 25."

In addition, Panama, the British Virgin Islands (BVI), and the United States have agreed to terms for financial institutions in their jurisdictions to comply with the U.S. Treasury's Foreign Account Tax Compliance Act (FATCA). This act ensures that American citizens with accounts in these territories declare and pay any taxes on income or investments earned in them that are due to the U.S. Internal Revenue Service. To date, over 1,000 financial institutions in Panama, including local banks, foreign bank branches and investment funds, have complied with FATCA.

We regret any misuse of our services and actively take steps to prevent it.

We regret any misuse of companies that we incorporate or the services we provide and take steps wherever possible to uncover and stop such use. If we detect suspicious activity or misconduct, we are quick to report it to the authorities. Similarly, when authorities approach us with evidence of possible misconduct, we always cooperate fully with them.

With regards to specific allegations in the media reports, we would like to comment as follows:

(a) Tax Evasion and Avoidance: Our company does not advise clients on the structuring of corporate vehicles and the use they may make of them. We likewise do not offer solutions whose purpose is to hide unlawful acts such as tax evasion. Our clients request our services after being duly advised by qualified professionals in their places of business. Moreover, it should be made clear that tax avoidance and evasion are not the same thing. For example, a client can use the structures provided by us for tax optimization of his/her estate, such as taking advantage of provisions in treaties for avoiding international double taxation. Such behavior is perfectly legal. (b) Due Diligence on Clients: To begin with, approximately 90% of our clientele is comprised of professional clients, such as international

financial institutions as well as trust companies and prominent law and accounting firms, who act as intermediaries and are regulated in the jurisdiction of their business. These clients are obliged to perform due diligence on their clients in accordance with the KYC and AML regulations to which they are subject.

(c) Politically Exposed Persons (PEPs): We have duly established policies and procedures to identify and handle cases where individuals either qualify as PEPs or are related to them. As per our Risk Based Approach, PEPs are considered to be high risk individuals. Hence, enhanced due diligence procedures apply in these cases. Also, periodic follow-up is conducted to assure that no negative results are found. Lastly, according to international KYC policies, PEPs do not have to be rejected just for being so; it is just a matter of proper risk analysis and administration to perform enhanced due diligence on them.

(d) Sanctions Lists and Convicted Criminals: The Service Provision Agreements signed with our clients impose on them the obligation to notify us as soon as they have knowledge of a client of theirs having been either convicted or listed by a sanctioning body. Likewise, we have our own procedures in place to identify such individuals, to the extent it is reasonably possible. Indeed, the documents cited in the media reports show specific instances demonstrating that once these types of situations are identified, we routinely discontinue the provision of our services. We have an obligation to follow an orderly administrative process when resigning from client engagements, which can vary depending on the regulations of the respective jurisdiction. Also, authorities sometime require the registered agent not to file any resignation in order to prevent obstructing their investigation.

(e) Provision of Company Secretarial Services: Company Secretarial Services are legal services that allow a professional company provider to act on behalf of a company that is owned by third parties. Company Secretarial Services are not used to hide the identity of the real owners of the company as for instance, a director is not in its nature the owner of the company. These services often include directorships and facilitate document filings before the authorities and registry of a company's jurisdiction. For example, a secretary might help a company register for taxes and file for licenses, manage patents and trademarks, tax returns and other documentation to be handled and filed. Company Secretarial Services are provided by many firms to professional clients and investors all over the world. The same director or company secretary can act on behalf of many different companies in different jurisdictions. That is widely accepted and perfectly legal, especially in cases where the purpose of a company is to be a holding company or own immovable or movable

property. The fact that many companies have the same directors and/or address does not mean that such companies are connected in any way, as is commonly assumed. Usually a director or company/corporate secretary has no economic interest or commercial link to the company's activity and he/she does not endorse, participate or assist in the commercial or passive roles of a company in any way. Following pre-established guidelines, the secretary appoints agents and attorneys that carry out the administration of the company.

(f) Shareholders and Beneficial Owners: Closely related to the point above, as part of the services our trust company provides, we often constitute trusts for shares. As a result, allegations that we provide shareholders with structures supposedly designed to hide the identity of the real owners, are completely unsupported and false. These types of services are always supported by the existence of legally recognized vehicles utilized for such purposes by all service providers in this industry. Even though we do provide shareholdership services through the legal structures already explained, we do not provide beneficiary services to deceive banks. Banks currently carry out their due diligence procedures just as we do. It is difficult, not to say impossible, not to provide banks with the identity of final beneficiaries and the origin of funds.

(h) Backdated Documents: The issuance of documents with a retroactive date is a well-founded and accepted practice when the decisions made with regard to the particular document are recorded in resolutions approved before or when the transaction in particular has taken place and the formalization is still pending. Such practice is common in our industry and its aim is not to cover up or hide unlawful acts.²⁹⁹

299. *Statement Regarding Recent Media Coverage*, MOSSACK FONSECA (Apr. 1, 2016), http://mossfonmedia.com/wp-content/uploads/2016/04/Statement-Regarding-Recent-Media-Coverage_4-1-2016.pdf.

X. APPENDIX TWO: THE REVOLUTION WILL BE DIGITIZED

John Doe

Income inequality is one of the defining issues of our time. It affects all of us, the world over. The debate over its sudden acceleration has raged for years, with politicians, academics and activists alike helpless to stop its steady growth despite countless speeches, statistical analyses, a few meagre protests, and the occasional documentary. Still, questions remain: why? And why now?

The Panama Papers provide a compelling answer to these questions: massive, pervasive corruption. And it's not a coincidence that the answer comes from a law firm. More than just a cog in the machine of "wealth management," Mossack Fonseca used its influence to write and bend laws worldwide to favour the interests of criminals over a period of decades. In the case of the island of Niue, the firm essentially ran a tax haven from start to finish. Ramón Fonseca and Jürgen Mossack would have us believe that their firm's shell companies, sometimes called "special purpose vehicles," are just like cars. But used car salesmen don't write laws. And the only "special purpose" of the vehicles they produced was too often fraud, on a grand scale.

Shell companies are often associated with the crime of tax evasion, but the Panama Papers show beyond a shadow of a doubt that although shell companies are not illegal by definition, they are used to carry out a wide array of serious crimes that go beyond evading taxes. I decided to expose Mossack Fonseca because I thought its founders, employees and clients should have to answer for their roles in these crimes, only some of which have come to light thus far. It will take years, possibly decades, for the full extent of the firm's sordid acts to become known.

In the meantime, a new global debate has started, which is encouraging. Unlike the polite rhetoric of yesteryear that carefully omitted any suggestion of wrongdoing by the elite, this debate focuses directly on what matters.

In that regard, I have a few thoughts.

For the record, I do not work for any government or intelligence agency, directly or as a contractor, and I never have. My viewpoint is entirely my own, as was my decision to share the documents with *Süddeutsche Zeitung* and the International Consortium of Investigative Journalists (ICIJ), not for any specific political purpose, but simply because I understood enough about their contents to realize the scale of the injustices they described.

The prevailing media narrative thus far has focused on the scandal of what is legal and allowed in this system. What is allowed is indeed scandalous and must be changed. But we must not lose sight of another important fact: the law firm, its founders, and employees actually did knowingly violate myriad laws worldwide, repeatedly. Publicly they plead ignorance, but the documents show detailed knowledge and deliberate wrongdoing. At the very least we already know that Mossack personally perjured himself before a federal court in Nevada, and we also know that his information technology staff attempted to cover up the underlying lies. They should all be prosecuted accordingly with no special treatment.

In the end, thousands of prosecutions could stem from the Panama Papers, if only law enforcement could access and evaluate the actual documents. ICIJ and its partner publications have rightly stated that they will not provide them to law enforcement agencies. I, however, would be willing to cooperate with law enforcement to the extent that I am able.

That being said, I have watched as one after another, whistleblowers and activists in the United States and Europe have had their lives destroyed by the circumstances they find themselves in after shining a light on obvious wrongdoing. Edward Snowden is stranded in Moscow, exiled due to the Obama administration's decision to prosecute him under the Espionage Act. For his revelations about the NSA, he deserves a hero's welcome and a substantial prize, not banishment. Bradley Birkenfeld was awarded millions for his information concerning Swiss bank UBS—and was still given a prison sentence by the Justice Department. Antoine Deltour is presently on trial for providing journalists with information about how Luxembourg granted secret "sweetheart" tax deals to multinational corporations, effectively stealing billions in tax revenues from its neighbour countries. And there are plenty more examples.

Legitimate whistleblowers who expose unquestionable wrongdoing, whether insiders or outsiders, deserve immunity from government retribution, full stop. Until governments codify legal protections for whistleblowers into law, enforcement agencies will simply have to depend on their own resources or on-going global media coverage for documents.

In the meantime, I call on the European Commission, the British Parliament, the United States Congress, and all nations to take swift action not only to protect whistleblowers, but to put an end to the global abuse of corporate registers. In the European Union, every member state's corporate register should be freely accessible, with detailed data plainly available on ultimate beneficial owners. The United Kingdom can be proud of its domestic initiatives thus far, but

it still has a vital role to play by ending financial secrecy on its various island territories, which are unquestionably the cornerstone of institutional corruption worldwide. And the United States can clearly no longer trust its fifty states to make sound decisions about their own corporate data. It is long past time for Congress to step in and force transparency by setting standards for disclosure and public access.

And while it's one thing to extol the virtues of government transparency at summits and in sound bites, it's quite another to actually implement it. It is an open secret that in the United States, elected representatives spend the majority of their time fundraising. Tax evasion cannot possibly be fixed while elected officials are pleading for money from the very elites who have the strongest incentives to avoid taxes relative to any other segment of the population. These unsavoury political practices have come full circle and they are irreconcilable. Reform of America's broken campaign finance system cannot wait.

Of course, those are hardly the only issues that need fixing. Prime Minister John Key of New Zealand has been curiously quiet about his country's role in enabling the financial fraud Mecca that is the Cook Islands. In Britain, the Tories have been shameless about concealing their own practices involving offshore companies, while Jennifer Shasky Calvery, the director of the Financial Crimes Enforcement Network at the United States Treasury, just announced her resignation to work instead for HSBC, one of the most notorious banks on the planet (not coincidentally headquartered in London). And so the familiar swish of America's revolving door echoes amidst deafening global silence from thousands of yet-to-be-discovered ultimate beneficial owners who are likely praying that her replacement is equally spineless. In the face of political cowardice, it's tempting to yield to defeatism, to argue that the status quo remains fundamentally unchanged, while the Panama Papers are, if nothing else, a glaring symptom of our society's progressively diseased and decaying moral fabric.

But the issue is finally on the table, and that change takes time is no surprise. For fifty years, executive, legislative, and judicial branches around the globe have utterly failed to address the metastasizing tax havens spotting Earth's surface. Even today, Panama says it wants to be known for more than papers, but its government has conveniently examined only one of the horses on its offshore merry-go-round.

Banks, financial regulators and tax authorities have failed. Decisions have been made that have spared the wealthy while focusing instead on reining in middle- and low-income citizens.

Hopelessly backward and inefficient courts have failed. Judges have too often acquiesced to the arguments of the rich, whose lawyers—and not just Mossack Fonseca—are well trained in honouring the letter of the law, while simultaneously doing everything in their power to desecrate its spirit. The media has failed. Many news networks are cartoonish parodies of their former selves, individual billionaires appear to have taken up newspaper ownership as a hobby, limiting coverage of serious matters concerning the wealthy, and serious investigative journalists lack funding. The impact is real: in addition to *Süddeutsche Zeitung* and ICIJ, and despite explicit claims to the contrary, several major media outlets did have editors review documents from the Panama Papers. They chose not to cover them. The sad truth is that among the most prominent and capable media organizations in the world there was not a single one interested in reporting on the story. Even Wikileaks didn't answer its tip line repeatedly.

But most of all, the legal profession has failed. Democratic governance depends upon responsible individuals throughout the entire system who understand and uphold the law, not who understand and exploit it. On average, lawyers have become so deeply corrupt that it is imperative for major changes in the profession to take place, far beyond the meek proposals already on the table. To start, the term “legal ethics,” upon which codes of conduct and licensure are nominally based, has become an oxymoron. Mossack Fonseca did not work in a vacuum—despite repeated fines and documented regulatory violations, it found allies and clients at major law firms in virtually every nation. If the industry's shattered economics were not already evidence enough, there is now no denying that lawyers can no longer be permitted to regulate one another. It simply doesn't work. Those able to pay the most can always find a lawyer to serve their ends, whether that lawyer is at Mossack Fonseca or another firm of which we remain unaware. What about the rest of society?

The collective impact of these failures has been a complete erosion of ethical standards, ultimately leading to a novel system we still call Capitalism, but which is tantamount to economic slavery. In this system—our system—the slaves are unaware both of their status and of their masters, who exist in a world apart where the intangible shackles are carefully hidden amongst reams of unreachable legalese. The horrific magnitude of detriment to the world should shock us all awake. But when it takes a whistleblower to sound the alarm, it is cause for even greater concern. It signals that democracy's checks and balances have all failed, that the breakdown is systemic, and that severe instability could be just around the corner. So now is the time for real action, and that starts with asking questions.

Historians can easily recount how issues involving taxation and imbalances of power have led to revolutions in ages past. Then, military might was necessary to subjugate peoples, whereas now, curtailing information access is just as effective or more so, since the act is often invisible. Yet we live in a time of inexpensive, limitless digital storage and fast internet connections that transcend national boundaries. It doesn't take much to connect the dots: from start to finish, inception to global media distribution, the next revolution will be digitized.

Or perhaps it has already begun.³⁰⁰

300. John Doe, *Panama Papers Source Offers Documents to Governments, Hints At More To Come*, THE INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (May 6, 2016), <https://panamapapers.icij.org/20160506-john-doe-statement.html>.
