



Chapter 12

U.S. Efforts To Recover the Enterprise Funds

In December 1986, before Independent Counsel was appointed, the Swiss government at the request of the Department of Justice froze the Enterprise accounts maintained in Switzerland. Sixteen accounts contained funds totaling \$7.8 million. While the initial U.S. request for assistance included a request for return of the funds, Independent Counsel's efforts to recover the funds for the United States began in earnest in early 1989, after the bank account records of the Enterprise had been obtained under the Swiss-American Treaty on Mutual Assistance in Criminal Matters and after the indictments of Lt. Col. Oliver L. North, Vice Adm. John M. Poindexter, retired Air Force Maj. Gen. Richard V. Secord and Albert Hakim were secured.

In Switzerland, the request for the return of the funds was before the Federal Office for Police Matters. The Office of Independent Counsel made its request through the Justice Department's Office of International Affairs.

Under the mutual assistance treaty, the U.S. request for the return of the funds had to be based on crimes recognized by Swiss law. In the Iran/contra request, the crimes were conspiracy to defraud and embezzlement, which corresponded to Counts One and Two of the indictment brought in March 1988 against North, Poindexter, Secord and Hakim. These counts were eventually dropped because the Reagan Administration refused to declassify certain information the court deemed relevant to the defense of North.¹ It was Independent Counsel's position, however, that the evidence it had provided to the Swiss authorities was sufficient to prove that a fraud on the U.S. Government had occurred.²

¹ Although as part of the Hakim plea agreement, Lake Resources Inc. in November 1989 pleaded guilty to a corporate felony of defrauding the U.S. Government in the Iran/contra diversion, Swiss law does not recognize corporate criminality. The Lake Resources guilty plea, therefore, could not support Independent Counsel's request for return of the funds.

² The standard of proof in the Swiss courts in this matter was "reasonable suspicion." The indictment and Judge Gerhard A. Gesell's upholding of Count One as a crime met the standard of proof.

Challenging the U.S. request for return of the funds were claims in Switzerland reportedly made by Secord, Hakim, Willard Zucker, and Hakim attorney Phillippe Neyroud. Although Hakim, after his criminal plea in November 1989, agreed to settle his claim for \$1.7 million of the funds and to settle the claims of others within that amount, he later reneged on the agreement.

In February 1992, the Federal Office for Police Matters advised the Office of Independent Counsel that it would not return the funds to the United States because the conspiracy and embezzlement charges had been dismissed. Independent Counsel's appeal of the ruling was rejected by the Swiss Federal Tribunal on grounds that the United States had no standing to appeal.³

³ Decision, Proceeding Nos. 1A.125/1992 and 1A.233/1992 (Swiss Federal Tribunal Mar. 29, 1993).

Independent Counsel had received the assistance of Richard Owen in the Criminal Division of the Department of Justice. In 1992 OIC requested, pursuant to the Independent Counsel Act, that the Department of Justice's Civil Division take over the matter in the Swiss civil courts.⁴ It at first declined. It then assigned a liaison attorney. With the change of Administration, it has now aggressively undertaken efforts to recover the stolen funds. That litigation is pending. At the time of

this report to the court, the Enterprise funds, plus several million dollars in interest that has accrued since December 1986, remain frozen in Switzerland.

4 28 U.S.C. 596(b)(2), (1987) P.L. 101-191, 101 Stat. 1305.