

*The Commonwealth of Massachusetts*

William Francis Galvin  
Secretary of the Commonwealth

**APOSTILLE**

(Convention de La Haye du 5 octobre 1961)

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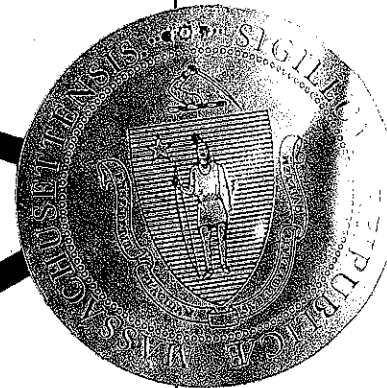
5. at: Boston, Massachusetts
6. the: 27 June, 2008
7. by: the Secretary of the Commonwealth
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William Francis Galvin  
Secretary of the Commonwealth



ARBITRAZH COURT OF THE CITY OF MOSCOW

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FEDERAL CUSTOMS SERVICES OF  
THE RUSSIAN FEDERATION

Claimant,

v.

BANK OF NEW YORK

Defendant.

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**LEGAL EXPERT WITNESS STATEMENT  
OF ALAN M. DERSHOWITZ**

I, Alan M. Dershowitz, pursuant to the provisions of 28 U.S.C. §1746, hereby declare as follows:

**I. DISCUSSION OF EXPERTISE**

I am the Felix Frankfurter Professor of Law at Harvard Law School, where I have been teaching criminal law and related subjects for 44 years. I have been teaching the RICO law since its enactment. I have published 28 books and hundreds of articles, many of them dealing with issues of criminal law. Two of my most recent books and several of my articles have dealt specifically with the issue of global terrorism. In addition to my academic and writing experience, I have also litigated numerous cases involving the RICO law, mostly at the appellate level. I have litigated cases involving numerous countries other than the United States. I have testified in front of congressional committees and have advised government officials and candidates regarding criminal law. (Attached is a complete copy of my current curriculum vitae.)

## II. FACTUAL BACKGROUND

I have been advised of the following facts:

On May 17, 2007, the Russian Federation through the Federal Customs Service filed an action in the Moscow Arbitration Court, against the Bank of New York ("BONY"), a bank chartered under the laws of the State of New York, for the illegal laundering of billions of dollars out of the Federation. Along with the claim, the Federal Customs Service filed certain documents that set forth the story and evidence how billions of dollars of money was laundered out of the Federation through BONY's involvement.

BONY itself has admitted and accepted its responsibility for the crime of money laundering. In November of 2005, BONY entered into a Non-Prosecution Agreement with the U.S. Attorney's Offices for the Eastern and Southern Districts of New York in which it acknowledged responsibility for its conduct and agreed to pay \$38 million in penalties and victim compensation.

BONY, the oldest bank in the United States, began conducting business in the Federation in the early 1990's. Following the collapse of the Soviet Union, BONY actively solicited new business in the emerging Russian market, formed an Eastern European Division, and opened a Representative Office in Moscow. As a result of BONY's concerted efforts, it quickly acquired a leading position among U.S. banks in handling correspondent accounts for Russian banks and for providing other services for Russian banks and citizens.

After actively expanding and establishing its presence in The Russian Federation, BONY, with the knowledge and assistance of BONY agents, employees and/or representatives,

served as a channel for the unlawful laundering and theft of at least \$7.5 billion dollars in violation of U.S. law.

The investigation by the U.S. Attorney's Office for the Southern District of New York uncovered a scheme, which was facilitated by a BONY Vice President – Lucy Edwards – involving the unlicensed transmission of billions of dollars originating in Russia through BONY accounts in the United States.

The illegal money laundering scheme facilitated by BONY began in late 1995, when Ms. Edwards, a Russian émigré and then high-ranking employee of BONY's EED, entered into an agreement with certain Russian co-conspirators to illegally launder money out of The Russian Federation to benefit her employer BONY as well as for career advancement with BONY and to a small extent, for personal gain.

Thereafter, in 1996, Ms. Edwards' husband, Peter Berlin, with the assistance of his wife who was a BONY Vice-President at the time, opened accounts at a retail branch of BONY in the names of Benex International Co., Inc. ("Benex") and BECS International LLC ("BECS"). From 1996-1999, approximately \$7.5 billion dollars originating in Russia flowed through the Benex and BECS accounts, and later a third account opened in the name of a company called Lowland.

As explained in the press release issued by the United States Attorney for the Eastern District of New York, the Benex and BECS accounts were part of an underground money transfer business that was operated by a bank located in Moscow and a company located in Queens, New York. Employees of the Queens company executed hundreds of wire transfers per day from the Benex and BECS accounts using electronic banking software, known as

micro/CASH-Register ("MCR"), provided by BONY to carry out wire transfer instructions provided by the Moscow bank.

In the aggregate, from around February 1996 to July 1999, not less than \$4.85 billion in funds was transferred through the Benex account at BONY. Within the same time period, not less than \$2 billion in funds was transferred through the BECS account. Based upon a subsequent investigation and audit, and as Mr. Thomas Renyi admitted in sworn testimony before the U.S. House of Representatives, "\$7.5 billion" was laundered during these "three years." Renyi Testimony at p.156. In addition, as admitted in the Non-Prosecution Agreement dated May 27, 2003 between BONY and the U.S. Attorney's Offices for the Eastern and Southern Districts of New York, during this "three and one-half years, billions of dollars in funds originating in Russia flowed through the Benex and BECS accounts at BNY." Non-Prosecution Agreement, at ¶3. With respect to only the Benex and BECS accounts, this included "\$7 billion in deposits" from February 1996 through July 1999." Non-Prosecution Agreement, at ¶3.

BONY received substantial income for the money that was laundered into and out of the various BONY accounts described above. BONY collected a fee on each wire transfer, plus other miscellaneous charges such as research fees, balance reporting fees and other service charges, which accrued daily. This activity generated a significant amount of income for BONY and created an incentive not to inquire into or report the obviously criminal conduct.

As admitted by BONY in the Non-Prosecution Agreement, BONY failed to perform the required due diligence or perform "know your customer" inquiries with regards to these accounts. Had it done so, BONY would have realized that the individual who opened

these accounts and was the husband of a high ranking BONY officer, was not in the "import/export" business. BONY never bothered to verify this information.

BONY also failed to monitor the activity in these accounts. Even a cursory investigation into the businesses of Benex, BECS, and Lowland, would have revealed that these businesses engaged exclusively in receiving transfers to the Benex, BECS, and Lowland accounts at BONY and then, with the help of BONY's MCR software, wire transferring those funds to third parties throughout the world. If BONY had properly monitored the activity in the Benex, BECS, and Lowland accounts, it would have easily discovered the highly suspicious activity and would have been obligated to report and end the illegal money laundering activities which caused harm to the Federation in the billions of dollars.

As stated in the Eastern District of New York press release, "other BNY executives in the Cash Management Division understood, correctly, that Benex and BECS essentially acted as payment brokers or money transmitters, whose businesses consisted solely of transferring funds on behalf of other parties, but those executives did not make any inquiry as to whether Benex and BECS were properly licensed as money transmitters."

The Benex and BECS accounts were the highest-producing fee accounts in their branch, yet BONY curiously failed to monitor these accounts. In fact, on the two occasions that employees in the Cash Management Division sought to conduct a money laundering review of the accounts due to the high volume of wire transfer activity, they were advised by a manager in the Funds Transfer division that BONY did not have an automated system for reviewing account activity and that it would be impractical to conduct a manual review of these accounts given their tremendous volume of activity.

BONY never audited Benex, BECS, or Lowland or requested any additional information whatsoever which would have put them on notice of the illegal money transfer operation or disclosed the true purpose of Benex, BECS and Lowland, despite a clear obligation under its policies, applicable banking practices and U.S. laws. No BONY employee ever visited the office addresses provided for the companies from which they were conducting millions of dollars in wire transfers on a daily basis, despite the fact that it is customary for an officer of the bank or a product manager to visit a client's office when an account is opened or when MCR software is installed. Additionally, even though some BONY employees were aware that the accounts were opened by the husband of a high ranking BONY officer, who was also listed as a signatory on one of the accounts, no BONY employee ever spoke to this officer about her role in the companies or ever attempted to verify whether she had complied with BONY's policies and procedures regarding conflicts of interest.

BONY Chairman of the Board and Chief Executive Officer, Thomas A. Renyi himself admitted BONY's misconduct when he testified under oath before the United States House of Representatives in Washington, D.C. regarding the money laundering scheme. During his testimony, Renyi openly admitted that the volume of funds moving through these accounts and used to facilitate the conspiracy were at a level that went "well beyond what would have been expected for businesses of [that] kind."

Renyi also candidly admitted that when BONY employees not involved in the conspiracy raised questions about the suspicious activity occurring, these questions "were not pursued with sufficient vigor or follow through" and the questioners relied too heavily on the fact that the accounts had been opened by the husband of a high ranking officer. He further

admitted that "[a]llowing these accounts to remain open and active without sufficient questioning was a lapse on the part of the bank," and states that "[there certainly were flags that were raised, not necessarily, unfortunately, to my level personally or to the regulators, but that there were individuals who supervised the accounts on a day to day basis who did see a marked increase in volume over what was originally reported to be or represented to be expected to go through those accounts."

In the Non-Prosecution Agreement, BONY specifically admitted that it "failed to monitor adequately the activity in the Benex and BECS accounts, which were the highest fee-producing accounts in the One Wall Street Branch where they were located" and that "as a result of the failure to monitor the activity in [those] accounts, a number of highly suspicious circumstances that should have raised flags about money laundering went undetected."

BONY further "acknowledged, among other things, that it failed to have an effective anti-money laundering program, that it intentionally failed to take steps to report known evidence of suspected criminal conduct by a bank customer and BONY employees as required under [U.S.] mandatory reporting obligations . . . even after that evidence came to the attention of senior BONY executives, and that both the bank's general counsel, managing counsel, and other senior executives repeatedly ignored the bank's legal obligations to file the required Suspicious Activity Report, doing so only after the principals of a BONY customer were arrested months later by federal authorities."

### **III. DISCUSSION OF LEGAL PRINCIPLES**

The Racketeer Influenced and Corrupt Organization Act ("RICO"), 18 U.S.C. § 1961 et seq., is a remedial statute that provides for criminal and civil remedies against defendants

who engage in various illegal activities. Among other things, a person violates RICO when he participates in or conducts the affairs of an "enterprise" through a "pattern of racketeering activity." 18 U.S.C. §1962(c). Under the RICO statute, an enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. 18 U.S.C. § 1961(4). Racketeering activity means "any act which is indictable under any of the following provisions of title 18, United States Code." Money laundering, pursuant to 18 U.S.C. § 1956, is a designated predicate act under RICO. 18 U.S.C. § 1961(1)(B).

The RICO civil action at issue here is based on predicate acts of money laundering. Based on the facts of which I have been advised, BONY encouraged and assisted in money laundering by conducting or attempting to conduct financial transactions, which involved the proceeds of specified unlawful activity, knowing that the property involved in the financial transactions represented the proceeds of some form of unlawful activity, and with the intent to promote the carrying on of specified unlawful activity or knowing that the transaction was designed in whole or in part, to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.

As noted, RICO provides for both civil and criminal penalties. Professor G. Robert Blakey and former United States Circuit Judge for the Second Circuit George C. Pratt have submitted legal expert witness statements that detail the differences in the criminal and civil processes in the United States. I agree with and incorporate by reference their discussion of distinctions between the criminal and civil law. As they note, there is a critical difference in the burden of proof. When the federal government commences a criminal RICO prosecution it must

prove its case "beyond a reasonable doubt." A private party, however, who is seeking to enforce RICO in a civil suit need only prove his case by "a preponderance of the evidence." For practical purposes, this means, that a plaintiff in a civil action is entitled to a verdict in his favor "even if there is reasonable doubt as to the liability of the accused, if the jury is satisfied nevertheless that the plaintiff has proved his case." Charles Herman Kinnane, A First Book on Anglo-American Law 562 (2d ed. 1952), quoted in Black's Law Dictionary (8<sup>th</sup> ed. 2004).

I first will address the legal issues relating to whether a foreign government is prohibited from bringing a civil RICO action in a foreign tribunal, and whether such action is consistent with the policies of the United States. Next, I will address whether a foreign tribunal is precluded from interpreting the injunctive relief and damages provisions of the civil RICO statute according to its own laws, and, specifically, whether the RICO statute precludes a Russian tribunal from ordering the disgorgement of the laundered proceeds or including as damages lost revenues or the amount of funds laundered.

**Question 1:** Is there any legal ban on a foreign government bringing a civil RICO action in a foreign court, and, if not, is there any United States policy that discourages such an action.

**Answer 1:** No. Foreign governments are "persons" entitled to bring a civil RICO action, and there is neither an express nor an implied prohibition on a foreign government bringing a cause of action based on civil RICO in a foreign tribunal. Moreover, there is nothing in the statute or its legislative history that suggests that Congress intended to discourage foreign nationals from relying on RICO to pursue civil actions in foreign tribunals. To the contrary, such actions are consistent with and advance the interests of the United States.

Civil RICO is a critical component of the statute. In the words of the Supreme Court, Congress “set out a far-reaching civil enforcement scheme.” Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479, 485 (1985). I agree with and incorporate by reference the extended discussion of the legislative history of RICO set forth in Professor Blakely’s Legal Expert Witness Statement.

Civil RICO was modeled on the federal antitrust act, the Clayton Act. As the United States Supreme Court has written:

Both statutes share a common congressional objective of encouraging civil litigation to supplement Government efforts to deter and penalize the respectively prohibited practices. The object of civil RICO is thus not merely to compensate victims, but to turn them into prosecutors, “private attorneys general,” dedicated to eliminating racketeering activity.

Rotella v. Wood, 528 U.S. 549, 187 (2000).

A party may bring a civil RICO action even if the defendant has not been charged with or convicted of criminal activity. Sedima, 473 U.S. at 488-90. Thus, any suggestion that the defendants are not subject to a civil RICO action because, though they entered into a non-prosecution agreement, they have not been convicted of a crime in a United States court is contrary to the law of the United States and should be rejected.

There is nothing in the RICO statute that would preclude a foreign tribunal from entertaining a civil RICO claim brought by a foreign government. Though the language of the statute allows for jurisdiction in “any appropriate United States district court,” the United States Supreme Court has held that this language is permissive, not mandatory. Taffling v. Levitt, 493 U.S. 455, 460 (1990). Consequently, the Supreme Court has held that RICO claims may be

heard by state courts, Tafflin, 493 U.S. at 465-67, and before arbitration tribunals. Shearson/American Express Inc. v. McMahon, 482 U.S.220, 242 (1987). In addition, United States courts have repeatedly found that “persons” under § 1964(c) include foreign, state and local governments. See, e.g., Republic v. of Philliphines v. Marcos, 862 F.2d 1355, 1358 (9<sup>th</sup> Cir. 1988); Republic of Turkey v. OKS Partners, 797 F. Supp. 63 (D. Mass. 1992); Illinois Department of Revenue v. Phillips, 771 F.2d 332 (7<sup>th</sup> Cir. 1985).

With respect to RICO’s application in foreign courts, the statute’s text does not forbid its application abroad and judicial practice has not precluded foreign courts from applying RICO. Indeed, it is questionable whether the United States Congress *could* enact an enforceable law that would prohibit a foreign sovereign from applying or enforcing a United States statute that provides for civil remedies in a civil suit brought in the sovereign’s courts.

But, more importantly, Congress has indicated that it would encourage the use of civil RICO to penalize international money laundering. International application of civil RICO would be supportive of United States interests, both as set out in the legislative history of the RICO statute, and as they have emerged in the 21<sup>st</sup> century.

RICO increasingly has become an important tool for preventing and monitoring criminal activity in the international community. Recent United States legal developments suggest a strong interest in seeing RICO used globally, particularly to fight global money laundering, a goal most assuredly consistent with United States interests. The global fight against terrorism, and the United States special interest in that fight, requires vigilant enforcement of money laundering prohibitions. In a global economy, terrorist financing frequently involves not only traditional money laundering – the cleaning of dirty funds to

conceal its origins, but also the diversion of funds from legitimate sources for use by terrorist organizations. See generally, Nina J. Crimm, High Alert: the Government's War On the Financing of Terrorism and Its Implications for Donors, Domestic Charitable Organizations, and Global Philanthropy, 45 William and Mary L. R. 1341 (March 2008). RICO has become one of the most critical weapons in the government's arsenal in fighting global terrorism. Id. at 1348.

Shortly after September 11<sup>th</sup>, President Bush signed Executive Order 13244, 66 Fed. Reg. 49,079 (Sept. 25, 2001), which directed various executive departments, including the Secretary of State, the Secretary of the Treasury and the Attorney General, to take steps to limit the activities of foreign individuals or entities who provide financial support for acts of terrorism. This included blocking the assets of any individual or entity who was designated as posing a risk of committing acts of terrorism. Both the 2001 USA Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (2001), passed in October, 2001, and the Suppression of the Financing of Terrorism Convention Implementation Act of 2002, Pub. L. No. 107-197, 116 Stat. 724 (2002), expanded predicate offenses under RICO to include, among other things, providing material support or resources to a foreign terrorist organization, or intentionally providing or collecting funds for use in terrorist activities. The Patriot Act also directed the government to obtain the cooperation of other nations and international financial institutions in efforts to stem the use of funds for terrorist activities. Thus, 31 U.S.C. § 5311 et seq. seeks international cooperation in reporting on financial transactions "to protect against international terrorism." And the Act further fortified efforts by the United States to ban international money laundering by providing long-arm in rem jurisdiction over a foreign money launderer's assets. 18 U.S.C. § 1956(b)(2).

In sum, a RICO civil lawsuit brought by a foreign nation in a foreign tribunal premised on the type of gross misconduct alleged here, and in particular, this vast money laundering scheme, is consistent with and advances Congress's goals in enacting a broad civil remedy and in ensuring its application in the global arena.

**Question 2:** Is there any legal ban on a foreign tribunal deciding a RICO civil claim from applying its own interpretation of the injunctive relief or damages available under civil RICO.

**Answer 2:** No. Civil RICO contemplates both injunctive relief and damages, but does not, by itself, limit the injunctive relief available or the measure of damages. Thus, a foreign tribunal may interpret the "relief" permitted under civil RICO in accordance with its own laws.

Under the provision for civil remedies, a court may "prevent and restrain" violations of Section 1962 statute by "issuing appropriate orders." 18 U.S.C. § 1964(a). There is no express limitation on what constitutes an "appropriate order." While the statute specifies certain types of orders that may be entered, it explicitly states that list is not exclusive (using the language "including, but not limited to"). The legislative history of the RICO statute evidences that Congress did not intend to limit the remedies available. Specifically, in the Senate Committee Report on RICO, Congress stated that "[s]ubsection 1964(a) contains broad remedial provisions for reform of corrupted organizations. Although certain remedies are set out, the list is not exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupted influence and make due provision for the rights of innocent persons." S.Rep. No. 91-617, at 160 (1969); accord. H.Rep. No. 91-1549, at 57 (1970).

The application of equitable relief under §1964(a), such as in the form of injunctions or disgorgement, is available to private parties in order to effectuate its remedial purpose. See National Organization of Women v. Scheidler, 267 F.3d 687, 696 (7th Cir. 2001), rev'd on other grounds, 537 U.S. 393 (2003). Moreover, there is no language in the RICO statute, nor could there be, that would preclude a foreign court from ordering equitable relief consistent with the foreign court's own equitable powers, even if those powers are different from or greater than the already very broad powers accorded to federal courts.

Pursuant to Section 1964(a), a foreign tribunal may order equitable disgorgement of money laundering proceeds. Equitable factors which the tribunal may consider in order to "prevent and restrain" future violations are (a) the nature of the wrongdoing; (b) the harm caused by the wrongdoing; (c) the likelihood that disgorgement will deter future conduct by the defendant or other persons generally; (d) the difficulty of victims proving damages because of the concealment by the defendant; (e) the possibility that other victims will not bring claims and thus the defendant will benefit by its wrongdoing if disgorgement is not ordered; and (f) the public good. Here, in analyzing these factors, in my opinion the foreign tribunal should find that the alleged facts support this remedy, given the massive nature of the alleged scheme and the importance of deterring future money laundering. Indeed, Section 1956(b), the money laundering provision, which civil RICO, in effect, enforces through lawsuits by "private attorneys' general," itself expressly provides that a defendant can be required to disgorge all illegal proceeds.

Disgorgement of all laundered money will also provide a substantial deterrent to this type of pervasive misconduct. A foreign tribunal may conclude that out-of-pocket damages

alone would not be a sufficient deterrent to future misconduct because they would be disproportionately small compared to the totality of the tainted funds BONY allegedly laundered. There is nothing in the text or legislative history or RICO that would preclude a foreign tribunal from imposing disgorgement as an equitable remedy to achieve the goals of the statute.

In addition, the statute provides that:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorneys' fee ....”

18 U.S.C. § 1964(c).

The Expert Witness Statement of Mr. Thornburgh argues that a civil RICO action cannot be maintained, because there is no injury and no damages. Mr. Thornburgh is incorrect in his assessment of the law. First, the United States Supreme Court has held that a plaintiff need not plead or prove a special “racketeering injury.” Sedima, 413 U.S. at 495-98. Thus, if a defendant engages in a pattern of racketeering activity as prohibited by § 1962, and the racketeering activity has injured the plaintiff, that is a sufficient basis for bringing a civil RICO action.

Second, Mr. Thornburgh argues that under United States case law a RICO plaintiff must show the defendant’s violation of the RICO statute was the proximate cause of his injuries. Holmes v. Sec. Investor Protection Corporation, 503 U.S. 258 (1992); Anza v. Ideal Steel, 547 U.S. 451 (2006). The causation requirement stems partially from our notions of standing. J. Rakoff, H. Goldstein, RICO: Civil and Criminal Law Strategy, § 107 (2007). The Court has held a RICO plaintiff “only has standing if, and can only recover to the extent that, he has been injured in his business or property by [reason of] the conduct constituting the violation. Sedima, 473 U.S. at 496. But there is nothing in the text or legislative history of RICO that would preclude a foreign tribunal (which may not subscribe to our strict standing principles) from applying its own rules of causation, even if those rules were differ from the causation rules

that govern an action brought in a federal or state court. Based upon my understanding of the facts of this case, The Russian Federation has suffered an injury which makes this an irrelevant issue.

Third Mr. Thornburgh argues that the United States proceedings (the execution of the non-prosecution agreement) did not by themselves establish that the Russian Federation suffered actual damages. That is only relevant to whether the defendants would be barred by the doctrines of res judicata or issue preclusion from litigating the issue of damages, and not to the very different issue of whether a lawsuit may be maintained.

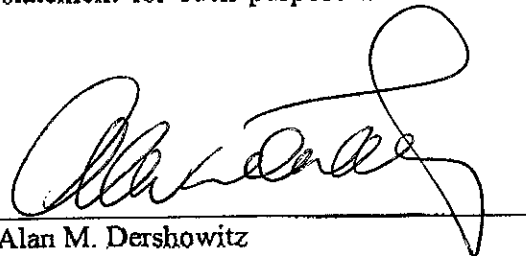
Finally, the wrongdoing allegedly caused serious harm to the Russian Federation, including, but not limited to, the loss of V.A.T. at a time of economic weakness. A few United States courts have held that civil RICO actions in federal courts in the United States cannot be used to recover lost tax revenues. Attorney General of Canada v. A.J. Reynolds, 268 F.3d 103 (2d Cir. 2001); European Community v. RJR Nabisco, 355 F.2d 123 (2d Cir. 2004). That rule – the so-called revenue rule – prohibits U.S. courts from enforcing tax judgments or tax claims of another sovereign. It applies to the courts of this country. It does not prohibit a Russian tribunal from finding lost tax revenues to be damages under civil RICO in a case decided by the very sovereign whose tax revenues have been stolen. Here it is my understanding that The Russian Federation is pursuing a statutory remedy against the Bank of New York pursuant to the RICO statute. Since the Russian Federation is not pursuing a claim for the collection of taxes, the Bank has no basis to argue that any judgment that the Russian Federation may obtain is not

decided by the very sovereign whose tax revenues have been stolen. The issue of enforceability of any judgment is for another court at another time.

#### IV. CONCLUSION

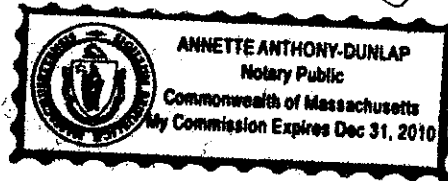
Based on this discussion, I have reached the conclusions enumerated in this statement.

I have executed this sworn statement in the United States of America and declare under the penalty of perjury pursuant to the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. It is my understanding that this sworn statement is to be used with regard to the claims as filed by and in The Russian Federation against BONY. I authorize the use of this sworn statement for such purpose and will freely respond to any potential challenges to its contents.



Alan M. Dershowitz

Dated: June 25, 2008



Commonwealth of Massachusetts  
County of Dukes County, ss.  
SUBSCRIBED AND SWORN TO, BEFORE ME  
This 26 of June, 2008 AD.

## CURRICULUM VITAE

### PERSONAL BACKGROUND

Born September 1, 1938, in Brooklyn, N.Y.

### PROFESSIONAL BACKGROUND

1993-present	Felix Frankfurter Professor of Law, Harvard Law School
1967-present	Professor of Law, Harvard Law School Courses taught include: Criminal Law; Psychiatry and Law; Prediction and Prevention of Crime; Psychoanalytic Theory and Legal Assumptions; Constitutional Litigation; Family Law; Comparative Criminal Law; Legal Ethics for Criminal Lawyers; Violence and Civil Liberties, Legal Tactics and Ethics, Concepts of Justice in the Bible and Other Holy Books, Thinking about Thinking
1964-1967	Assistant Professor of Law, Harvard Law School
1979-1980	Guggenheim Foundation Fellow
1971-1972	Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford University
1970 (summer)	in residence, Hebrew University Law School
1969 (summer)	Scholar in Residence, Vera Institute of Justice
1966-1968	Lecturer on Law and Psychiatry, McLean Hospital
1967 (summer)	Visiting Professor of Law, Stanford Law School
1966 (summer)	Faculty, Special Summer Program for Black Law Students
1963-1964	Law Clerk, Justice Arthur Goldberg, U.S. Supreme Court
1962-1963	Law Clerk, Chief Judge David Bazelon, U.S. Court of Appeals, District of Columbia Circuit
1961 (summer)	Law Clerk, Kaye, Scholer, Fierman, Hays & Handler, New York, NY

### Bar Memberships

1968	Massachusetts
1967	U.S. Supreme Court
1962	District of Columbia

### EDUCATIONAL BACKGROUND

1962	LL.B. (now J.D.), <i>magna cum laude</i> , Yale Law School
1961-1962	Editor-in-Chief, <i>Yale Law Journal</i>
1959	B.A., <i>magna cum laude</i> , Brooklyn College
1958-1959	President, Brooklyn College Student Government
1957-1958	President, Brooklyn College Debate Society
1951-1955	Yeshiva University High School Varsity Basketball

## **Books Published**

*Is There a Right To Remain Silent? Coercive Interrogation and the Fifth Amendment after 9/11.* Oxford University Press, 2008.

*Finding Jefferson: A Lost Letter, a Remarkable Discovery, and the First Amendment in an Age of Terrorism.* Wiley, 2008.

*Blasphemy: How the Religious Right is Hijacking our Declaration of Independence.* Wiley, 2007.

*Preemption: A Knife that Cuts Both Ways.* Norton, 2006

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*The Vanishing American Jew: In Search of Jewish Identity for the Next Century.* Little, Brown, 1997.

*Reasonable Doubts.* Simon & Schuster, 1996.

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*The Abuse Excuse.* Little, Brown, 1994.

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*Taking Liberties: A Decade of Hard Cases, Bad Laws and Bum Raps.* Contemporary Books, 1988.

*Reversal of Fortune: Inside the von Bulow Case.* Random House, 1986.

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### **Books and Monographs Co-authored or Edited**

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*Courts of Terror* (worked with Telford Taylor). Vintage Books, 1976.

*Fair and Certain Punishment: Report of the Twentieth Century Fund Task Force on Criminal Sentencing*. McGraw-Hill, 1976. (Rapporteur and author of background paper.)

*Criminal Law: Theory and Process* (with Joseph Goldstein and Richard Schwartz). Free Press, 1974.

"Constitutional Dimensions of Civil Commitment," a monograph prepared for the National Commissions on Marijuana and Drug Abuse, published in *Drug Abuse in America: Problem in Perspective*, Vol. IV, 1973, pp. 397-449.

*Psychoanalysis, Psychiatry and the Law* (with Jay Katz and Joseph Goldstein). Free Press, 1967.

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