
Investigating and Prosecuting Nigerian Fraud

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Introduction

During the last twenty years, organized crime elements with ties to Nigeria have come to dominate crime emanating from West Africa. These criminal groups, also known as Nigerian Crime Enterprises (NCE's), have become adept at executing transnational criminal activities, including fraud schemes directed to the United States. See *Combating International African Crime: Hearing Before Subcomm. on Africa of House Comm. on Int'l Rel.* (July 15, 1998) (statement of Thomas Kneir, FBI) available in 1998 WL 400598 [hereinafter *Kneir Statement*]; *Impact of Data-Sharing on National Security: Hearing Before Subcomm. on Nat'l Sec., Vet. Affairs & Int'l Rel. of House Comm. on Govt. Reform* (July 24, 2001) (statement of Bruce Townsend, United States Secret Service), available in 2001 WL 870378 [hereinafter *Townsend Statement*].

Nigeria is the largest country in Africa and boasts a population of 100 million people, a rich diversity of languages, customs, and ethnic groups, as well as large oil and gas reserves. However, since gaining full independence from Great Britain in 1960, Nigeria has been plagued by long periods of military rule, and consequently, weak democratic institutions, including an often ineffective and corrupt court system. See U.S. Dept. of State, Bureau of African Affairs, *Background Note: Nigeria* (August 2000) (visited Sept. 12, 2001) <http://www.state.gov/r/pa/bgn/index.cfm?docid=2836> [hereinafter *Background Note*]; *International Crime in Africa: Hearing Before the*

Africa Subcomm. on African Organized Crime of House Com. on Int'l Rel. (July 15, 1998) (statement of Jack A. Blum), available in 1998 WL 403633 [hereinafter *Blum Statement*] (noting "non existent criminal justice systems"); *Situation in Africa: Hearing Before Subcomm. on African Affairs of Senate Comm. on For. Rel.* (May 15, 1996) (statement of Jean Herskovits, Prof. of History), available in 1996 WL 387276 [hereinafter *Herskovits Statement*]. While most Nigerians are law-abiding people, a yearly per capita income of \$300, combined with governmental institutions lacking legitimacy, have helped to spawn organized crime of all types. See *Background Note*, *Blum Statement*, *Herskovits Statement*.

The United States is Nigeria's largest trading partner, and not surprisingly, is the frequent target of drug smuggling and fraudulent schemes by NCE's. NCE's perpetrating fraudulent schemes have proven to be sophisticated and elusive foes. There is no true organized crime structure as is found in more traditional organized crime investigations, although Nigerians do associate along tribal lines. See *Combating International African Crime: Hearing Before Subcomm. on Africa of House Comm. on Int'l Rel.* (July 15, 1998) (statement of Phil Williams, Director, Ctr. for Int'l Sec. Studies, Univ. of Pittsburgh) available in 1998 WL 400575 [hereinafter *Williams Statement*]. This association is often one of convenience, and many times, the lines between the groups are blurred. There are no clear lines of authority or communication, and tribal lines are crossed with regularity when it is

convenient and profitable. Taken together, these factors make for an investigator's nightmare. The usual organized crime investigative techniques are difficult, if not impossible, to implement in Nigerian cases.

In light of these challenges, federal law enforcement agencies and the Department of Justice have developed specific policy initiatives and have devoted significant resources during the past few years to combating Nigerian fraud schemes and other types of Nigerian organized crime. Part I of this article outlines the most prevalent kinds of Nigerian fraud schemes. Part II describes the multi-agency Nigerian Crime Initiative (NCI), which attempts to provide the infrastructure necessary for investigators and prosecutors to pursue individual cases. Finally, Part III reports on recent cases from the United States Attorney's Office for the Southern District of Texas and the Houston Area Fraud Task Force. The cases suggest how these success stories might be replicated elsewhere.

I. Types of Nigerian fraud schemes

According to the Secret Service, one quarter of the major fraud scams it investigates now involve Nigerians. Described as brazen and brilliant, these scams result in the loss of hundreds of millions of dollars each year worldwide. The favorite target of these scam artists is the United States. In the past few years, a significant percentage of the total loss from Nigerian fraud has occurred in the United States, and the amount of loss is expected to continue to grow. See *Townsend Statement*. The frauds take on many forms including dubious business deals with advance fees, insurance scams, health care fraud, credit card fraud, bank fraud, and identity theft.

A. Advance fee/"419" fraud

The most notorious of Nigerian scams is the advanced fee fraud scheme known as the "419" scheme, named after a statute in the Nigerian criminal code. This fraud typically begins with an unsolicited letter or e-mail. The communication purports to be from a Nigerian official or ex-official, a doctor or a tribal chief. The letters are addressed personally to a potential victim explaining that a "mutual business associate" has suggested that the writer contact the addressee

confidentially. The letter requests the recipient's assistance in transferring large sums of money in exchange for a percentage. The letter almost always represents that: 1) there is a large sum of money, known only to the writer, waiting to be paid out of the government coffers as a result of accounting shenanigans or over invoicing; 2) the writer is a member of the Nigerian government or the Nigerian military trying to move the money out of Nigeria but needs help from abroad; 3) the writer is willing to share the money with the recipient who provides assistance; and 4) secrecy is an absolute must because other corrupt officials would seize the money for themselves if they knew of its existence. The amounts represented are usually in the area of \$35 million but may be as much as \$75 million. In return for the help of the addressee, the writer promises anywhere from 20% to 30% of the total. In other words, the addressee is offered \$7 -10 million for very little effort and virtually no risk.

The vast majority of these letters and e-mails arriving in the United States are promptly deposited into actual or virtual wastebaskets. Hundreds more are forwarded to the United States Postal Service, the F.B.I., or the Secret Service. Sometimes, however, the crooks get lucky. A victim responds with a tiny nibble and the hook is set. The Nigerians are masters of this game and go to great lengths to convince the victim of the legitimacy of the plan. Many times a "disinterested" third party, usually from a European nation, is introduced to lend an air of legitimacy. Sometimes, an important sounding institution becomes a part of the plan.

After a number of communications and an appropriate amount of time, the Nigerian will report that the money is finally available for transfer. Unfortunately, some unforeseen problem arises, and the advance payment of fees is necessary to clear the final hurdle. This is the essence of the fraud. Sometimes, another government official "finds out about the plan" and hush money is needed to bribe him. Other times, it is a transfer fee, or shipping insurance, or "points" for the financial institution or middle man. If the victim sends the money, similar roadblocks will continue to pop up until the victim is out of money or realizes he has been duped.

B. "Black Money" scheme

A recent variation on the Advance Fee scheme is known as the "black money" scheme. In this variation, the millions of dollars in the possession of the writer have been defaced by government officials with a chemical which has turned the bills black (a precaution to keep the money safe from thieves or corrupt officials), or by some sort of industrial accident. The writer can have the money shipped to the victim if the victim agrees to front the cash necessary to purchase the chemical to cleanse the money. The writer agrees to send a representative to meet the victim and demonstrate the cleansing process. At the meeting, the representative demonstrates the process by "cleaning" several one hundred dollar bills with what he claims is the last of the chemical. He then pressures the victim to pay money for storage fees, shipping fees, and more of the chemicals to clean the remaining millions of dollars.

Unfortunately, the victims of these 419 schemes typically do not report the crime because they are embarrassed by their naivete and feel personally humiliated. Some even feel they may be criminally liable as a result of their involvement in the scheme.

C. Access device fraud

Another Nigerian scheme involves access device fraud, usually in connection with several other federal criminal violations. The fraud typically begins with the leasing of a commercial mail box (usually in a false name). By searching dumpsters or rifling through mailboxes at an apartment complex, the Nigerian thief can obtain fifteen to twenty credit card offers in a matter of minutes. Using the name of the true addressee, but changing the address to his newly acquired commercial postal box, the crook applies for hundreds of credit cards each day. Once the cards begin to arrive, the fraud grows exponentially. Cash advances are obtained. Credit card convenience checks are used to open bank accounts and investment accounts. Checks drawn on the fraudulently opened bank accounts are used to pay down the credit card bills. Even though the checks are fraudulent, the credit card companies are required to give immediate credit on the

account. This allows the thief to obtain even more cash advances and open more bank accounts. If investment accounts are used, the accounts are opened with fraudulent items. Once funded, the Nigerian or his recruit forwards a wire transfer order directing the investment company to forward the funds to a bank account under his control.

D. Identity fraud and credit card fraud

One credit card is never enough, nor is one identity. The typical Nigerian fraud scheme involves multiple identities, several postal boxes, many bank accounts, and, recently, more than one city. To further decrease his visibility, the Nigerian recruits young Americans to participate in the scams. The lure of fat wallets and expensive automobiles is more than enough to encourage the minimum wage earner to take a chance. With a little coaching, the recruit becomes adept at opening bank accounts and moving the money. If caught, the recruit feigns ignorance or has a canned story about his wallet being stolen.

The Internet has increased the opportunities for the Nigerian criminal while decreasing his exposure. Using computer programs, groups of Nigerians have routinely been able to obtain lists of credit card numbers issued by credit card companies operating in international commerce. The card numbers are issued through foreign banks to customers who are residents of Great Britain, Germany, or other European countries. By fax or phone, the Nigerians use the stolen credit card numbers to order expensive computers or computer parts from small dealers in the United States. The buyer provides the stolen credit card number in payment of the purchase. Most purchases are successful because neither the cardholder nor the credit card company realizes that the card number has been compromised. The purchases are shipped to coconspirators in the United States who repackage the products and ship them to various cities in Europe or to Lagos, Nigeria.

It is not unusual for the Nigerian to open a small retail business such as a clothing resale shop or import/export business. Naturally, to become competitive in our capitalist society, a small businessman must agree to accept credit cards for

payment. In the case of some Nigerian small businessmen, the credit card merchant account becomes merely another tool of fraud. Stolen and counterfeit credit cards are routinely "swiped" through the point of sale terminal, each transaction representing what would appear to the credit card company to be a large purchase. The funds are forwarded from the credit card company to the Nigerian's merchant account to complete the transaction. In reality, no transaction or sale of merchandise took place because there was never any inventory of goods to be sold. Investigation usually shows that the Nigerian businessman, his friends, and relatives acquired by theft and other means, a number of credit card numbers and re-encoded the information onto magnetic strips on the back of plastic blanks. The blank cards are swiped through the terminal during business hours in order to avoid scrutiny.

E. Bank fraud

Bank fraud scams orchestrated with stolen and counterfeit checks also comprise a large part of the Nigerian fraud repertoire. Armed with a computer, scanner, desk top publishing program, color printer, and basic computer know how, the Nigerian fraudster can print corporate checks in any dollar amount with an authorizing signature that is virtually identical to the original. By recruiting co-conspirators and opening multiple accounts, including some in assumed business names, an enterprising Nigerian fraudster can operate without fear of getting caught.

It is not unusual for a Nigerian fraud perpetrator to recruit a bank insider to provide account information. Employees in a bank's customer service department usually have access to all customer accounts via computer in order to assist customers who have questions or complaints about their accounts. Once the employee finds an account with a large balance, the account information is compromised and forwarded to the Nigerian. Armed with the essential account information, the Nigerian prints checks or issues wire transfer orders directing the bank to transfer large sums into accounts under the control of the Nigerian. Sometimes two or three wire transfers are used to insulate the Nigerian from the transaction.

II. Resources and policy initiatives

A. Nigerian Crime Initiative (NCI)

The Nigerian Crime Initiative was launched in compliance with the 1995 Presidential Decision Directive 42 (PDD-42), which was aimed at combating international organized crime and which directed agencies to collaborate with each other and foreign governments in order to fight international organized crime more effectively. *See Townsend Statement*. In keeping with this mission, the NCI has helped to develop: (1) an interagency working group in order to share information and help make policy, (2) the Anti-Drug Network (ADNET) computer system for collecting and tracking data relating to Nigerian crime, and (3) Interagency Nigerian Organized Crime Task Forces (INOCTF), which are located in cities where Nigerian crime is more prevalent and investigate local Nigerian Crime Enterprises. *See id.*; *Impact of Data-Sharing on National Security: Hearing Before Subcomm. on Nat'l Sec., Vet. Affairs & Int'l Rel. of House Comm. on Govt. Reform* (July 24, 2001) (statement of Bruce C. Swartz, Deputy Asst. Attorney General), *available in 2001 WL 846011* [hereinafter *Swartz Statement*].

1. NCI Working Group

The NCI working group brings together representatives of every important federal law enforcement agency as well as the Department of Justice and the Department of State. The NCI includes the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Immigration and Naturalization Service (INS), National Drug Intelligence Center (NDIC), U.S. Customs Service (USCS), U.S. Secret Service, Financial Crimes Enforcement Network (FINCEN), IRS - Criminal Investigation Division (IRS-CID), U.S. Marshals Service (USMS), U.S. Postal Inspection Service (USPIS), Department of Defense/Defense Information Systems Agency (DISA). Because Nigerian organized crime is sophisticated and multifaceted, the response to it must draw upon all of the resources of the Federal Government, working in concert. The working group helps to pool information among the law enforcement agencies by discussing the latest issues and ensuring that ADNET is a useful tool

for investigators and prosecutors. The working group tracks the timeliness of data entry, and it educates users on how to use ADNET effectively.

The working group develops policies and plans to combat international Nigerian crime by supporting the task forces. It helps to select task force cities and assures that the task force cities carry out the mission of the NCI. The working group also addresses policy issues, such as privacy and discovery in criminal cases.

2. ADNET

ADNET is a computer network with powerful capabilities for the storage and retrieval of data concerning Nigerian crime. ADNET is a secure system and can be accessed through dedicated ADNET terminals in the task force cities. *See Townsend Statement.* In conjunction with the working group, an outside private contractor trains and provides support to investigators working Nigerian crime cases. ADNET terminals are also located in Lagos, Nigeria and Accra, Ghana, so that data can be accessed close to sources of much of the Nigerian crime activities.

Several federal law enforcement agencies contribute and access ADNET data. In the last two years the number of records in the NCI database has increased dramatically, making the network a potentially valuable resource to law enforcement. Some of this data consists of information collected from prior criminal investigations, including aliases used by persons involved in Nigerian criminal activities.

3. Interagency Nigerian Organized Crime Task Forces

The Interagency Nigerian Organized Crime Task Forces (INOCTF) consist of several law enforcement agencies in a number of United States cities where NCE activity has been particularly troublesome. INOCTF target NCE's and investigate Nigerian crime, including Nigerian fraud schemes, in a coordinated manner. As noted above, task force cities have access to ADNET terminals, so that data from other cities can be used in investigations. The coordinated NCI approach expects that through information sharing, investigators can spot connections between different types of Nigerian criminal

activity. Indeed, experience has shown that NCE's rarely engage in one type of criminal activity to the exclusion of all others. *See Swartz Statement.*

The predecessors to the INOCTF were the Secret Service task forces already in place to counter Nigerian crime. Under the NCI, the Secret Service task forces were transformed into multiagency task forces, but the Secret Service continues to host the task forces. This has allowed the NCI to tap into expertise that has been developed by the Secret Service since the 1980's in areas such as access device fraud.

B. United States Secret Service website and Financial Crimes Division

The United States Secret Service was designated in 1998 by the Attorney General as the lead investigative agency for Nigerian crime. Through the Secret Service Internet website, and its Financial Crimes Division in its Washington headquarters, the Secret Service acts as a central repository for complaints about Nigerian fraud. The internet address is <http://www.treas.gov/uss> [hereinafter *Secret Service Web Site*]. The most commonly reported scheme is the Advance Fee scam, described in Part I. The Secret Service receives hundreds of reports of solicitations on a daily basis concerning Nigerian fraud. *See Electronic Fraud & Identity Theft: Hearing Before Subcomm. on Fin. Serv. & Tech. of Senate Comm. on Banking, Housing & Urban Affairs, (Sept. 16, 1997) (statement of Dana Brown, U.S. Secret Service) available in 1997 WL 572487 [hereinafter Brown Statement].* Victims of Nigerian fraud can make a report to the Secret Service through the website, through the mail, or by telephone. The Secret Service web site serves as an example for another component of the NCI, namely public education. It informs potential victims of the warning signs of an advance fee scheme and advises them to avoid these "too good to be true" offers.

The Secret Service compiles all of the complaints it receives relating to Nigerian fraud in an investigative database. Where the victim has suffered financial loss, the Secret Service initiates an investigation. For simple solicitations, *i.e.*, where the recipient has not fallen for the scam and has not sustained financial loss, the Secret Service

will save the information for future cases. The database helps to link victims of the same perpetrator, since the fraudster always sends out numerous solicitations and attempts to hook as many victims as possible with the same offer. Proof of these multiple victims is powerful evidence in demonstrating a defendant's fraudulent intent.

III. Recent cases and analysis

A number of Nigerian cases have been successfully prosecuted in the Southern District of Texas as a result of aggressive investigation by the Houston Area Fraud Task Force. The task force is comprised of representatives from a number of federal and local law enforcement agencies including the Secret Service, the FBI, the Immigration and Naturalization Service, the Postal Inspection Service, the Houston Police Department, the Harris County Sheriff's Office, the Texas Rangers, the State Department, and the Drug Enforcement Administration. The combination of expertise and assets provided by the representatives of these agencies allows for rapid response to ongoing fraud schemes as well as the ability to work through complicated, long-term fraud investigations.

A. *United States v. Okonkwo*

After several attempts to arrest Nigerians perpetrating 419 schemes, the Houston task force attained its first success in June 2000 with the arrest of John Okonkwo, Jerome Okwudi, and Kingsley Ireke. This case combined elements of both the advance fee and the black money schemes. The case began in March 2000 when Russell Burris, a New Mexico real estate salesman, responded to an email from "Joy Anan" who purported to live in Cotonou, Republic of Benin. Anan advised that she had been left a large sum of money by her late husband who had been killed in West Africa. Between April 1, 2000 and June 14, 2000, Burris, Anan, and an associate of Anan, exchanged emails over the Internet regarding Anan's desire to have Burris act as a manager/investor for the \$15,500,000 left by Anan's late husband. If Burris agreed to be the manager and travel to Cotonou to receive the appointment, he would receive a 5% fee.

Burris received a fax from "Koffi Biyah" of Trans-World Security Company in Cotonou confirming the information provided by Anan and requesting that Burris pay \$2,500 to open a "special domiciliary account" and \$24,500 for a "Telegraphic Transfer Clearance Certificate." The fax stated that the funds were necessary to effect the transfer of the money to an account of Burris' specification. When Burris requested further explanation, he was advised by fax that the money was needed to expedite the transfer process and to buy the proper "banking permit."

Burris began to receive email communications from "Kite Anan" who purported to be the son of Joy Anan. Kite Anan told Burris that he would need to send \$24,000 to Biyah as soon as possible to expedite the transaction and that he would need to bring \$2,500 with him to Benin to open the account. Burris also received a fax from Biyah confirming the need for Burris to send the money so that the funds could be released from the vault of Trans-World Security. When Burris refused to travel to Africa, Kite Anan stated that the \$15,500,000 could be placed with a Trans-World Security agent in Chicago so that the deal could be consummated in the United States. Burris would pay all transfer and handling charges in Chicago.

On June 14, 2000, Burris received a fax from the "Debt Reconciliation Committee" in Houston, Texas referencing the \$15,500,000 and requesting that Burris come to Houston to sign the final release documents for the transfer of the money. The fax stated that Burris would have to pay an \$18,000 processing fee and \$5,000 for insurance before the funds could be released.

On June 19, 2000, Burris, with Secret Service Agent Tonya Cook posing as his wife, "arrived" in Houston and were met by a limousine driver. They were taken to the Marriott Hotel where a room had been prepared with audio and video equipment to record any subsequent meetings. One hour later, three individuals arrived and two men, dressed in full tribal regalia, went up to the room while the third stayed near the vehicle.

The two men who went to the room stated that they were in possession of \$15,500,000 that was being kept at a different location. They stated that

the money had been defaced with some sort of chemical and needed to be cleaned before it could be taken to a bank. They requested the \$23,000 be paid immediately. Burris gave the two Nigerians \$5,000 in cash and a check in the amount of \$18,000. HAFTF agents burst into the room and arrested them.

The third Nigerian was arrested downstairs and his car was impounded and inventoried. Inside a briefcase, agents found an envelope with the name Russell Burris written on it. There was also a piece of paper with five other names and associated telephone numbers along with various dollar amounts written on it. By contacting the individuals, agents found that each of them had paid between \$15,000 and \$25,000 to the defendants.

All three Nigerians were charged and convicted of conspiracy and inducing another to travel in interstate commerce in furtherance of a scheme to defraud. Crm. No. H-00-4777 (S.D. Tex. 2000.) The videotape proved to be compelling evidence and helped to induce all three defendants to plead guilty. Okonkwo and his two codefendants received sentences ranging from eight to twenty-one months. When they complete their stay at the Bureau of Prisons, they will be released to the INS for deportation proceedings.

B. *United States v. Okiti*

A second successful investigation of a 419 scheme began in February 2001. The task force was contacted by Lawrence Siler, a businessman in Portland, Oregon. Siler told the task force that he had been contacted by a group of Nigerians requesting that Siler invest a large sum of money on their behalf.

In September 2000, Mr. Siler received a letter via facsimile entitled "Abacha Family Estate." The letter outlined a business proposal in which Dr. Maryam Abacha requested that Siler receive \$25.6 million from her to invest in the United States. The letter indicated that the funds were the result of some deal between her late husband and a Russian firm. After the Nigerian government revoked her license to own a financial or oil company, Abacha had removed the funds and packaged it into two trunks.

Because of the oppression of the Nigerian government, she supposedly was looking for a way to sneak the money out of Nigeria quickly.

Mr. Siler responded to the letter via email, requesting that the trunks of money be sent to him in Portland. A series of faxes and emails followed with Abacha insisting that Siler travel to Europe to receive the money and pay shipping and insurance costs. Siler refused.

In December 2000, Abacha advised that the money would be in Houston with a family representative named Mohammed and that Siler should contact Mohammed to make arrangements to obtain the trunks containing the money. From December 2000 through March 2001, several telephone calls were placed and recorded between Siler and Mohammed.

On March 11, 2001, Siler arrived in Houston and met with task force members. Agents wired a room at the Marriott Hotel and waited for Mohammed to arrive. Secret Service Agent Alicia Broussard posed as Siler's secretary. "Mohammed" arrived at the hotel bringing two large bags with him. In the room, he opened the bags and told Siler that they contained \$6 million each. Inside the bags were numerous individually wrapped stacks of money. The money was stamped with the initials "U.N." According to Mohammed, the "U.N." stamp meant that the money was from the United Nations and could only be used overseas. A special chemical was necessary, according to Mohammed, to clean the money. Mohammed then removed two hundred dollar bills from one of the stacks and cleaned the initials with a small amount of liquid. He stated that he needed \$23,000 to purchase additional chemicals to clean the rest of the money. After receiving the money, agents arrested Mohammed and identified him as Victor Okiti. The suitcases were found to contain numerous stacks of cut paper which had counterfeit hundred dollar bills on top and bottom of each stack. The only legitimate currency in the bags were the hundred dollar bills Mohammed had washed during his demonstration.

A search warrant executed at Okiti's residence revealed more suitcases and more counterfeit money. Okiti was charged with wire fraud and possessing counterfeit currency. In the face of videotaped evidence of his crimes, he pled guilty to the charges. Despite the fact that this was a "no loss" case, Okiti received a sentence of thirty-three months in prison, after which he will be deported. Crm. No. H-01-261 (S.D. Tex. 2001).

C. United States v. Nwachukwu

Combining his bank fraud scheme with religion, "Pastor" Christian Nwachukwu engaged in fraud for several years. The investigation began when a local bank contacted members of the task force concerning the deposit of counterfeit checks drawn against accounts at foreign banks. Worthless checks totaling thousands of dollars drawn against a closed account at a London bank had been deposited to the Bank United account of Ty Scarce. Because bank personnel handled the deposited checks as normal items instead of sending them for collection, Scarce's account was immediately credited and the funds represented by the checks were withdrawn before the checks were returned from Great Britain.

The account holder, Ty Scarce, stated that she had been introduced to "Pastor" Christian Nwachukwu by a friend. Nwachukwu had explained to her that depositing checks in her account would help his ministry. She agreed and was supposed to receive \$4,000 from the deposits. Her cooperation allowed agents to record her conversations with Nwachukwu and led to his arrest. As he was being arrested, Nwachukwu told an agent that the banks were at fault for not verifying the checks before releasing the money to him. The defendant later moved to suppress this incriminating statement, claiming that he never made it and that law enforcement agents had beaten him. Nwachukwu testified on his own behalf at trial and repeated these allegations, which were refuted by a large number of government witnesses who were in a position to observe the injuries caused by the alleged beating and who saw none of the injuries claimed by the defendant.

Subsequent investigation revealed that Nwachukwu had convinced several other young females to open accounts in their names for his use. All of them had been duped into believing they were somehow assisting his ministry, and the defendant took advantage of this trust by using the accounts to execute his fraudulent scheme, as he did with Ty Scarce's bank account. In addition, INS records revealed that Nwachukwu had entered the United States on a student visa to enroll at a ministry school in Tennessee. He was refused enrollment when his application was found to contain several false statements.

Nwachukwu was convicted of bank fraud and money laundering by a jury which rejected his claim of mistreatment by law enforcement agents. He is currently awaiting sentencing with the Sentencing Guidelines placing his sentence in the range of 87-108 months. Crm. No. H-00-781 (S.D. Tex. 2000).

D. Challenges in Prosecuting Nigerian Fraud Cases

The successes achieved in Houston can be attributed to the commitment of the various agencies in the task force, the cooperation of the banks and credit card industry, and the United States Attorney's office dedicating a prosecutor to coordinate the prosecution of these cases. Much remains to be done, however, and significant hurdles must be overcome before lasting success against Nigerian fraud can be achieved.

The transnational quality of these cases presents the most fundamental difficulty. Perpetrators meet with their victims, if at all possible, in Nigeria. If a victim travels to Nigeria to obtain the pot of gold promised by the fraudster, not only does the victim face physical danger or death, but finding and arresting the perpetrator is extremely difficult, if not impossible. *See Combating International African Crime: Hearing Before Subcomm. on Africa of House Comm. on Int'l Rel.* (July 15, 1998) (statement of Edward Markey, U.S. Representative) available in 1998 WL 400600 [hereinafter *Markey Statement*] (reporting that 15 foreign businessmen and two United States

citizens have been murdered in Nigeria in connection with 419 schemes).

Obtaining evidence from Nigeria is an uncertain enterprise because it has been rarely tried, and a Mutual Legal Assistance Treaty (MLAT) is not yet in force. Extradition of fugitives from Nigeria has been difficult, in part because the country is just emerging from military rule and lacks a well established judicial process for the return of fugitives. *See Nigerian White Collar Crime: Hearing Before Subcomm. on Africa of House Comm. on Int'l Rel.* (Sept. 16, 1998) (statement of Mark Richard, Deputy Asst. Attorney General) available in 1996 WL 517475 [hereinafter *Richard Statement*] ("Nigeria's response to U.S. extradition requests has been very uneven and unreliable"). However, the Department of Justice's Office of International Affairs (OIA) is currently engaged in a dialogue with Nigerian officials about improving the extradition process, and OIA encourages prosecutors to submit fresh extradition requests in order to move this dialogue forward. The Fraud Section has produced a monograph entitled "Prosecuting Nigerian Advance Fee Fraud" which discusses the issues of collecting foreign evidence and extradition in more depth.

Fortunately, when members of NCE's decide to come to the United States, the prospects for success change dramatically, as demonstrated by the recent Houston cases. In *Okonkwo*, investigators with the Houston task force were able to set up a sting operation where the fraudster could be videotaped making his false promises. The agents in *Okonkwo* also obtained valuable documentary evidence from a search of one of the coconspirators namely, a piece of paper with the names of other victims. This type of evidence is powerful proof of a defendant's scheme and intent to defraud. It also impacts the defendant's sentence under the Sentencing Guidelines as relevant conduct.

Even when Nigerian fraudsters travel to the United States and "smoking gun" evidence is obtained, it is difficult to do lasting damage to the NCE itself. Leaders of the NCE tend not to travel to the United States and meet victims. This task often is left to low-level members of the organization, and the prosecution of the crime

bosses is frustrated by the problems involved in obtaining evidence and extradition from Nigeria. Moreover, because NCE's tend to organize around tribal relationships, it is difficult to infiltrate an NCE with an undercover agent who does not belong to the requisite tribe. These difficulties present investigators and prosecutors with a substantial and continuing challenge in the fight against Nigerian fraud. Toppling NCE's will require greater assistance from foreign governments and the use of innovative investigative techniques by law enforcement.

IV. Conclusion

While Nigerian fraud schemes are pervasive and have been aided by the growth of the Internet, they remain for the most part, brazen and almost transparently fraudulent. These repetitious and seemingly outlandish scams continue to lure United States citizens looking to strike it rich. Investigating and prosecuting Nigerian fraud in a coordinated fashion, as demonstrated by the recent cases in Houston, can be done successfully with cooperative victim-witnesses and sting operations. Once victims come forward and the full scope of the defendant's criminal behavior is revealed, the fraudulent nature of the transactions engineered by the defendant is readily grasped by a jury. Achieving greater success against Nigerian fraud will require continued interagency collaboration, public education, and greater international cooperation. ♦

ABOUT THE AUTHORS

□ **Jim Buchanan** A career prosecutor, Jim Buchanan was an Assistant District Attorney for Harris County, (Houston) Texas for eleven years and has been an Assistant United States Attorney since 1993. As an AUSA, he has served as a white collar crimes prosecutor and is currently assigned to the Organized Crime Strike Force. He received the Director's Award in 1998 for superior performance by an AUSA for his prosecution of insurance/health care fraud in South Texas. In 1999, Mr. Buchanan was named as the coordinator for the Attorney General's Nigerian Organized Crime Strategy in the Southern District of Texas. He served as the chairman of the Government Lawyer's Section of