

Afraid to allow Imelda Marcos to return to her homeland, the Philippine government is letting U.S. courts chase her money. But, for all the tears she sheds in court, Imelda's hardly going to lose all her shoes, jewels or her far-flung fortune.

Dry those tears, Imelda

By Jonathan Greenberg

IMELDA MARCOS, a onetime beauty queen, has been putting on the performance of her life the past two months. On trial in federal court in New York on charges of embezzling millions from the Philippines and laundering the funds in the U.S., the former Philippine First Lady breaks into tears regularly. Her lawyer portrays her as a frail widow who was "abducted" from her homeland by U.S. government agents.

But all the tears and histrionics mean little. No matter what the outcome of the New York trial, Imelda will probably be able to hold on to most of her wealth, estimated to be far in excess of \$2 billion.

The outlook in the Philippine case has changed dramatically since February 1986, when Corazon Aquino swept into power and the Marcoses were swept out. Back then it seemed as though the new government would have little trouble recovering the Marcoses' far-flung assets.

The Aquino government won its biggest court victory in 1986 when a federal district court in Los Angeles is-

sued an order preventing the Marcoses from selling any of their assets—not only in California but anywhere in the world. How could a U.S. court claim jurisdiction over foreign leaders like the Marcoses? On the somewhat flimsy grounds that the Marcoses had invested \$30 million to

\$40 million in two California banks.

Flimsy or not, the court order was affirmed two years later by the U.S. Ninth Circuit Court of Appeals in San Francisco. Significantly, the appeals court indicated that the Marcoses' funds were not protected by the Act of State doctrine. That doctrine had

been used for years to prevent U.S. courts from reviewing any actions that foreign leaders took while operating in their official capacity. It really comes down to a matter of national sovereignty—the idea that no nation has the power to make another nation subject to its laws.

Why didn't the doctrine apply to the Marcoses? The federal appeals court ruled that the various misdeeds in question had nothing to do with Marcos' position as president. Wrote Appellate Judge John Noonan, "Our courts have had no difficulty in distinguishing the legal acts of a deposed ruler from his acts for personal profit. . . . [These latter acts] are as adjudicable and redressable as would be a dictator's act of rape." The U.S. Supreme Court in effect agreed, refusing to hear the case.

Faced with such court rulings against him,



Imelda Marcos goes to court with lawyer Gerry Spence
Will the jury sympathize?

Imelda Marcos' flamboyant defense attorney, Gerry Spence, has decided to play for the jury's sympathy. He tries to portray his client as the victim and suggests she wouldn't have any idea whether her husband was looting the Philippine treasury.

Spence is also ignoring the California courts' stance on the Act of State doctrine; he claims that since Ferdinand Marcos declared martial law in 1972, all his actions were official and therefore exempt from review in a U.S. court. This strategy was clear when he talked to *FORBES* before the trial started in early April. Said he, "If Mrs. Marcos is going to be tried, she should be tried in the Philippines."

Gerry Spence knows that criminal trials in the Philippines, as in the U.S., can take place only with the defendant present, and he also knows that the Aquino government is deathly afraid to allow Imelda to return to the country where she and her late husband remain popular. Thus all action against Mrs. Marcos in Philippine courts has been civil, not criminal. And this has effectively prevented the Aquino government from going after the Marcos booty as a whole. Instead, Aquino's prosecutors have at least 35 separate cases against the Marcoses that are bogged down in the cumbersome civil process.

Even if the U.S. wins its case against Imelda in New York—or the Philippine civil cases miraculously come to a quick conclusion—she will hardly lack for shoes or the other baubles she so prizes. Most of her money is believed to be held outside the U.S., perhaps in Austria, Luxembourg or the Cayman Islands as well as in Switzerland. So far only about \$700 million has been uncovered—about \$400 million in Swiss bank accounts, some \$100 million in U.S. assets and \$200 million in the Philippines. The Swiss government has agreed to freeze the \$400 million on deposit with Swiss banks, and thus far lower Swiss courts have indicated that the Aquino government has the right to the funds—but only if a judgment against Imelda Marcos is handed down by the Philippine Supreme Court. That could take years.

The solution? Some legal experts favor an international treaty that would force all signatories to hand over banking information in cases where deposed dictators or international fugitives have stashed illegally obtained funds. Says Harvard law professor Abram Chayes, who has advised the Aquino government, "A lot of this money is simply not going to be recovered." So what's new? ■

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May 31, 1990

Kanematsu USA Inc.

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IHG acted as financial advisor to Kanematsu USA Inc. and assisted in the negotiations. IHG is a private investment bank specializing in corporate finance and crossborder advisory services.



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