

THE BROOKINGS INSTITUTION

FALK AUDITORIUM

ONE YEAR AFTER THE PANAMA PAPERS:
PROGRESS ON ANONYMOUS CORPORATE OWNERSHIP?

Washington, D.C.

Thursday, March 30, 2017

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Keynote:

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P R O C E E D I N G S

MR. KLEIN: Good afternoon. I'm Aaron Klein, a fellow here at Brookings and I'm a policy director in our Center on Markets and Regulation. It's my pleasure to welcome everyone here for this conversation that is really about the issue of anonymous corporate ownership and the question about where we stand today one year after the -- as we approach the one-year anniversary of the release of the Panama Papers, which was really a stunning and groundbreaking event and a success of independent and investigative journalism in looking at the web of finance and money globally.

I am really thrilled to be here and to be able to convene this conversation where we try and take this one issue of corporate ownership and whether beneficial owners should be required to or not disclose themselves, i.e., can you allow anonymous corporate beneficial ownership, and try and turn it like the proverbial Rubik's cube on all of its axes. Because there are a lot of different faces of policy upon which this covers and we have a panel of experts to go through some of these questions: the financial questions, the ethical questions, the foreign policy questions, the effect on business, as well as on statecraft and foreign policy. And this really touches a lot of different areas.

Before I introduce the panelists who cover these different areas let me tell you a little bit about where I come from. So I come at this issue in distinct things. First, I'm a very proud, life-long Marylander, who's always been slightly suspicious of the states that border Maryland. Sometimes Maryland's thought of as like the Bolivia of the U.S. We're always losing a little bit of land to all of our neighbors. (Laughter) And you can't kind of delve into this concept without appreciating the divergence and difference between all of the different states because really the question of disclosing ownership is a state-based issue.

The real lens upon which I look at this is from my professional lens in terms of financial regulation, particularly questions regarding money laundering -- or AML, anti-money laundering -- provisions, which have grown tremendously over decades as becoming one of the predominant tools in which policy is enacted not necessarily what you think. AML began as an attempt to catch the mob. For those of you who may remember the stories of Al Capone, Al Capone didn't go to jail for murder. Al Capone didn't go to jail for organized crime. Al Capone went to jail for taxes.

AML started about tax cheats and the Mafia in the '60s. It then morphed to a vital tool in going after narco-trafficking and our war on drugs in the '80s and '90s. After 9-11, it took another turn for terror finance and trying to stop the movement of funds that is necessary for global terrorism, as a tool in our global war on terror.

This is two-core corollaries. One, it's grown every time that AML's been asked to do a new thing. Now it's being asked to be part of the core parts of sanctions, about how we can contain potential enemy states like Iran and North Korea. Every time it grew a new responsibility, it didn't shut its old. We're still using AML for all of those things.

And it's increased its complexity and its costs. And its costs are borne broadly on the system. The core tenet of AML is know your customer, KYC. We all here have bank accounts. We're all -- our banks are supposed to know us, know whether we're suspicious or not, report on us as we move our money around. And if they do not, they're at fault.

Okay, that's fine. Everybody here, when you get a bank account, you give the bank your name. How is a bank supposed to know its customer if its customer doesn't have to identify itself? How does that work? What level of complexity and costs does that incur on the system? And how is that cost then spread around, not just all of us in the room, but there are some people who don't have bank accounts in America, in part because the bank's cost of knowing their customer is high?

That's one lens to look at this issue in financial regulation. There are a lot of different lenses. And so with that, let me turn to the panel who's going to really delve into this issue.

And I'm going to start with our moderator, Kevin Hall. Kevin is the chief economic correspondent and senior investigator, investigator reporter, for McClatchy Newspapers. He's the former president of the Society of American Business Editors and Writers. He's a multiple award winner having won the Weidenbaum Center Award, the Loeb Award, the Sigma Delta Chi Award, and was a Pulitzer Prize finalist. So it's wonderful for Kevin to be able to join us.

And let me briefly kind of go through the folks on the panel that Kevin will run. Immediately -- well, let's start on the far end with Charles Davidson. Charles is the publisher of the American Interest and executive director of The Hudson Institute's Kleptocracy Imitative. In 2006, he co-founded the think tank Global Financial Integrity and was instrumental in the launch of the Financial

Accountability and Corporate Transparency Coalition in 2011.

In addition to all of these illustrative intellectual pursuits, he also is one of the executive producers of the documentary “We’re Not Broke,” which premiered at the Sundance Film Festival. And I must say that another former executive producer of “The Lego Batman Movie” is now the United States Secretary of the Treasury. So your resume may be well-suited for bigger and bolder things. (Laughter)

On the other end of the dais closest to me is Ambassador Norm Eisen. Ambassador Eisen is a fellow at the Governance Studies program at Brookings, a CNN political commentator, chair of the government watchdog CREW, which he co-founded in 2003. I had the joy and privilege of serving in the early days of the Obama administration with Norm when he was special assistant to the president for ethics and government reform. He was the ethics czar.

In addition to Norm’s service to our country here in Washington, he served us abroad as the ambassador to the Czech Republic from 2011 to 2014, where he continued his focus on anti-corruption and transparency issues internationally.

Next to Norm is Matthew Ekberg. Matthew’s a senior policy advisor at the Institute of International Finance, the IIF, which is a global association of financial services industries. They represent over 500 commercial investment banks, asset managers, insurance companies, sovereign wealth funds, everybody in the world of finance, operating in 70 different countries.

In his capacity Matt is the lead on matters concerning standards of the Basel Committee on Banking, the Financial Stability Board, the Financial Action Task Force FATF, which is an acronym many folks in the anti-money laundering world know by heart.

Prior to joining IIF, he was vice president for international policy at the international arm of the American Bankers Association. And before that, he served in the Majority Leader’s Office at the U.S. House of Representatives and did a stint in the administration at the U.S. Trade Representative where he worked on multiple free trade treaties. We’ll see how many of those are still standing.

Last but not least is Brian O’Shea. Brian is a senior director at the Center for Capital Markets Competitiveness at the U.S. Chamber. I should give Brian’s organization and Brian himself a great plug. They’re holding a fantastic event right now, which I urge all of you to catch via webcast since you’ve chosen to spend your time here. And we’re incredibly thankful for Brian for doing double duty,

playing a double-hitter today, and running over here to join us and give us his view.

Before joining the Chamber, Brian was senior advisor to Congressman Scott Garrett, who's chairman of the Capital markets Subcommittee on the House Financial Services. He served as legislative director to Congresswoman Wagner and Congressman Canseco, both members of the House Financial Services. So Brian's looked at this from both a legislative and the business perspectives.

Without further ado, Kevin, the floor is yours.

MR. HALL: Thanks a lot. And with the Batman reference, I'll leave it to everyone in the audience to determine who Bruce Wayne is, who Robin might be, and the Joker and the Penguin and all that.

SPEAKER: Don't forget Alfred.

MR. HALL: Cannot forget Alfred. So I appreciate it and I appreciate the invite from Brookings to do this. The Panama Papers project was kind of measured in dog years. It was some pretty unglamorous work of pouring over 11.5 million documents. Obviously, we didn't read every one of them, but it was 2.7 terabytes of data, so this dwarfed any other leak that had ever come before. And I think there's a general leak fatigue that people just kind of throw them all together, the Podesta leaks, the Hillary's email leaks. But this was qualitatively and quantitatively different.

I just want to take one second to kind of explain that so you have a framework of judging as we start going into beneficial ownership and things of that sort. The Panama Papers was a leak of this data from the law firm Mossack Fonseca, which was one of the leading registered agents, a law firm that registered offshore companies all around the world. The files dated back to the '80s and went all the way to December 2015, so you had some real-world information of players and actors in the current sphere and a lot of historical information.

This came to the International Consortium -- it came to Süddeutsche Zeitung, the Bavarian newspaper, which quickly realized this was more than they could handle. They turned to the International Consortium of Investigative Journalists, ICIJ, who then brought in partners around the world. This came in a raw form. This was raw data that then had to be classified, broken apart into file formats. It had to be put up on servers that were protected around the world. You had to build in redundancies. You had to have staff.

All this and then you had to have a platform. We had separate platforms for where the actual data was and a separate platform for communication. Think of it like a Facebook for everybody who cooperated. So you had 370 journalists who are eventually brought in on that before the first publication on April 3rd, working around the world, most of them in the project for at least a year before we went to publish; 370 people who kept a secret. That in itself is a miracle. (Laughter)

And several of the partners had elections and had information that could have very much changed the course of their elections, and still had to sit on that. And so I think this really is a testament to collaborative journalism in the truest sense of the word. I don't think anything has existed prior to this remotely like this in terms of the kind and range of partners from BBC and Guardian, the smaller players in Ecuador, Bolivia. I don't think Bolivia was actually part of it, but Paraguay. You know, so from big to small, we had people involved in it and all of them somehow or another managed to keep this quiet. And that in itself was pretty remarkable.

So that said, 14 months later, roughly, we all met in September 2015 in Munich, about 100 people. And that stayed secret, which in itself was pretty remarkable. Set the course, set the date, which then changed again. And from September 2015 forward, that really was the run-up to April. And then, as you know, Vladimir Putin's closest associates, the godfather to his daughter, a lot of people who policy people knew these names, but I'm not sure the average person did. And I think when we're looking at the Russia question today dogging the Trump administration, I think part of our knowledge about Russia and offshores and that world kind of overlaps with this discussion, as well.

So with that, that's a little framework. We're going to try to touch on both domestic issues, national security implications, globalization, a whole range of topics that I think we can touch on. And then we'll obviously have questions from the audience, as well.

So I think what we'd like to do to start it off is talk a little bit about where we are a year later. And I think we'll start with a technical point. We'll turn to Matt first and talk a little bit about what has happened since those papers were published? The first series of stories have gone through the whole year, but April 3rd.

MR. EKBERG: Sure. No, thanks very much and thanks again to Brookings for having us here today. It's a very important topic, very pleased to discuss it.

I think it's mixture, right. You have to look at what the response was post the publication of the Panama Papers and then look at what's been going on generally to strengthen the AML/CFT framework globally. So I'll take it from an international perspective.

If you look at the G-20 response, the G-20 has been for many, many years very much focused on transparency and improving the international AML/CFT framework, eliminating illicit activity from the financial system. And that's taken a variety of different routes. But post Panama Papers, they've really refocused quite a bit on this issue of beneficial ownership, something we'll touch on quite a bit I think on this panel. But I think it's worth noting what that response actually was, and it relates specifically to the mandate by the G-20 to task the Financial Action Task Force, the FATF, the really review their standards around beneficial ownership and what that actually means in the context of implementation in the member states of the FATF.

And so over the course of this last year, and reporting in to the G-20 presidency, the FATF has really been looking through their mutual evaluation process, their peer review process, at how their recommendations, recommendations 24 and 25, which speak specifically to beneficial ownership and how you actually look at transparency, registries around beneficial ownership, et cetera, in the member states of the FATF are actually being applied. And then looking at gaps in implementation and looking at where those gaps can actually be filled.

And more broadly, the FATF is also working with the Global Forum, which is the forum for international information -- tax exchange of information on how there can be synergies and also some coherence between tax information sharing alongside beneficial ownership. So those sort of pillars within the context of what the FATF is doing and the G-20 is doing is really trying to strengthen the framework and address some of the issues that we did see through the release of the Panama Papers.

Secondly, I think more broadly it's important to look at the context of everything else that's being done to strengthen the international framework for AML/CFT. So if you're looking at some specific issues, one very key is around information sharing, the ability to look at the exchange of financial crime-related information globally. And this is something, hopefully, we'll delve into a bit deeper. I'll just touch on it now.

But secondly, there's also a lot of work being done to strengthen the understanding, the

regulatory certainty and regulatory clarity aspects of the AML/CFT regime globally; looking at standards around correspondent banking, trade vice money laundering, other areas. And seeing where international standard-setting bodies as well as domestic authorities can actually provide greater information, greater clarity, greater certainty for financial institutions and other financial actors operating in this space, so they understand what's expected of them, what's expected in terms of dealing with their clients, and strengthening the risk-based approach regime, as well, so that there can be more work done in this area, but also we can avoid some of the pitfalls.

And lastly, I think there's been a greater push to look at innovation, as well; to look where technology can be focused on preventing some of these issues of illicit activity in the financial system, where banks can be used, various aspects of their information and their own innovation, to look at better understanding their customer base, but also for the law enforcement agencies to better leverage innovation globally and take a look through the entire system to find that illicit activity.

So there's quite a bit being done on various aspects of this. We can debate the speed of that and the approach being taken, but certainly things are progressing in this area.

MR. HALL: Let me, if I can do a glossary real quick, we have people listening in on the webcast, too, so forgive me if this is a little basic. Some people may know this, some won't.

The G-20, of course, is the Group of 20, the most industrialized -- arguably, the most industrialized nations. AML is anti-money laundering. You'll hear that a lot today. Obviously counterparty is the person who's on the other end of a transaction. And the FATF is the Financial Action Task Force, which is a global body with input from most U.N. signatories. Right?

MR. EKBERG: It's about 37 countries.

MR. HALL: Thirty-seven, okay, sorry. So, Norm, did you want to jump in on what's been done in the past year in your mind?

AMBASSADOR EISEN: Well, I take a somewhat less patient approach with the slow-grinding wheels of the FATF and some of the international bureaucracies. Of course, I was a proud member of the Obama administration and was very active on our administration anti-corruption activities, both in the White House where that fell within the purview of my duties as the ethics czar and then as one of our foreign policy emissaries working abroad on issues like the Foreign Corrupt Practices Act. I was

telling Kevin I was the chair of the Chamber's affiliate in Prague when I was the ambassador there, and corruption and transparency issues were critically important.

I don't believe that we have been as vibrant or as innovative in our leadership. We've defaulted to the usual bureaucratic processes in addressing the terrible endemic corruption that was unearthed by the Panama Papers. Kevin, I suppose it's beyond my intervention to debate the Panama Papers versus the Snowden collaboration that issues, I would just note parenthetically, that the issues of security and of classification there added a layer of different complexity.

But I did want to start by telling a story that explained the urgency of this because I think we're very ready as a country to participate somewhere in the middle of the pack in the G-20, maybe a little bit ahead of the middle of the pack on pushing for these issues, but not really to look at the hard questions, including the hard domestic political questions, that ought to drive this.

So I'd been ambassador for not very long when a delegation of Czech anti-corruption advocates came to see me in my beautiful office in the Schoenborn Palace, a very fancy Renaissance office building owned by the United States; very dysfunctional. It was not designed when it was built in the 17th century to serve as a modern embassy. The hallways and warrens, and it took me a year before I could get from point A to point B. No matter where I thought I was going, I ended up in the courtyard or in the attic, but never my destination.

This group came to see me to talk about a corruption problem that they were having in the Czech Republic, an alleged terrible theft that had happened. And they said, and we're having a problem with beneficial ownership of this. We can't get through to who the real owners are because they've set up a shell corporation and they've hidden their identity in this very bad jurisdiction.

And I thought they were going to describe some Eastern European country or perhaps somewhere off in the Caribbean harboring shell corporations or elsewhere in the world. I said, well, tell me where it is.

Delaware. (Laughter)

And I do feel that we have been too quick as advocates to look to some of the more granular and technical solutions globally and too slow to ask the hard political questions. Here we've had legislation moving Congress, we'll talk about that; bipartisan legislation. It's died and there's been a

comity. Delaware itself is very protective of its prerogatives and other American corporations who shield, other American jurisdictions who shield the beneficial owners of corporations. And there's been an unwillingness to look at this situation and the tremendous harms that the corruption it facilitates makes possible.

So I would like us to be a little more courageous close to home. And even in the refined corridors of the G-20 ministries I don't think we've been as vibrant and as vigorous in dealing with this as we should be.

MR. HALL: And a clarification, in the Panama Papers there was virtually nothing in Delaware companies, in part because Mossack Fonseca did not operate as a registered agent there. They operated in Nevada and in Wyoming to a small extent, and we can go into great conversation later on that because both of those states feature into the ongoing debate and they certainly were interested in Delaware's business.

AMBASSADOR EISEN: There's a race to the bottom among American jurisdictions who offer incorporation services, unfortunately.

MR. HALL: And we'll come back to that on these questions of beneficial ownership, but let's turn to Brian a little bit. In your mind, over the last year what stands out as what has or hasn't happened, positive or otherwise?

MR. O'SHEA: Sure. And let me say thank you, Kevin, and thank you, Aaron and Brookings, for having me here today. And Aaron, I'll say as a native Virginian, I share your suspicion of bordering states, as well, so just to add that. (Laughter)

So maybe to expand that question a little bit, because I think it's a question of what's happened in the last year, but also understanding the framework that already exists in the United States and has existed to catch illicit activity, you know, and criminals who are setting up corporations or enterprises specifically for criminal purposes. And, in fact, you know, after the Panama Papers a lot of discussion, you know, we think unfortunately, transferred right to beneficial ownership disclosures, which I know we're going to discuss in greater detail later on in the panel.

But, in fact, through Treasury and other means there's already been kind of a robust framework in place. You know, for example, and Aaron had mentioned it, you have the customer due

diligence rules that were just approved last year and require financial institutions to kind of enhance via the Know Your Customer requirements. You have the IRS SS4 Form which includes an entity's employer identification information. And the Secretary of Treasury is allowed to share that information with law enforcement if he believes there is an exigent need and criminal activity going on. They're allowed to share information of that entity with law enforcement.

You have the FinCEN FBAR reports, which require U.S. citizens to report control over foreign accounts that are over I think the number is \$10,000. You have geographic targeting orders that are set up specifically for title companies that FinCEN, again, can look at certain areas where there might be bad activity going on.

And then you have, you know, of course, the IRS 6103 protections, which are the protections that are in place to protect taxpayer information from public disclosure. You have a number of exceptions in there where that information, with a court order, can be shared with law enforcement.

So from the Chamber's perspective, you know, we think it's a little unfortunate that instead of looking at this current system we have in place in the United States in figuring out where some of the gaps are, where some of the vulnerabilities are, and maybe looking at some targeted fixes to that, what's happened -- and this happens a lot in Washington -- is you have, you know, a subset of bad actors which make up a relatively small portion of the population. And the response in a lot of the proposals is, well, let's make everybody law-abiding, you know, everyone, American citizens comply with a whole new set of rules and disclosures in order to try and catch a small number of the bad guys.

And, again, we'll get into that later in the panel and we think that has enormous consequences down the road, you know, both for startup company formation, for criminal liabilities, for a small business owner who may happen to make a paperwork error in some of the reports that are being talked about. But I think at the outset it's helpful to understand post Panama Papers the existing infrastructure we have in place and maybe the importance at looking at that infrastructure and where the gaps are and searching some targeted fixes instead of a blanket requirement for everyone, including law-abiding citizens.

MR. HALL: I have some thoughts to continue on that, but let me go to Charles and talk maybe a little bit in terms of kleptocracy and what it told us and where we are a year later.

MR. DAVIDSON: Right. I don't necessarily disagree with a lot of the positions of the Chamber, but I'd also like to thank Norm, so that I won't seem radically extreme now. (Laughter) So many thanks. And thank you, Aaron, and thank you, Brookings, for putting this together and inviting me.

And a year after this story broke, well, what's new? One thing that's new is we're holding this event and there's a lot of attention being given to this issue. There's a huge amount of attention being given to it in Europe, perhaps more than here, and there's a lot of follow-through. In various ways, the U.K. has recently passed some legislation in regards to beneficial ownership. So there's a lot of action in various directions. We're probably lagging.

Just as an aside, another thing that's happened, at least for me with the break of the Panama Papers, is that the Kleptocracy Initiative at Hudson was no longer considered quite so radical and problematic, but people realized that we weren't quite as crazy as some thought.

And in that regard we shouldn't just think about the Panama Papers as a case, but as an indicator of the magnitude of all this stuff as a global problem. What percentage of the global offshore problem, just to give it a designation, is represented by the Panama Papers? One and a half percent? Two percent? Three percent? You know, it's somewhere in that zone. It's certainly 5 percent or less, I would say. I think anyone who knows anything about this world would say it's not more than that. So we have to multiply Panama by, I don't know, at least 20, 30, if not 100 or more to get a sense of the magnitude of this problem and understand that this is not isolated. This is, in fact, the systemic that exists right now in the international financial world. Not all of it, by any means, certainly not in the purely onshore U.S. financial world, but this is a problem.

And we see in the Panama Papers all of these different types of malfeasance that are facilitated by all of this stuff that was going on, everything from the enablement of kleptocracy and kleptocrats to tax evasion to criminal money of various sorts, be it drugs, human trafficking, any number of things. It was nice to have a little classical music in there with Putin's cellist. I used to play the cello, still do, so that sort of rang nicely for me. I mean, it's no wonder that fine instruments have gone up in price in the last decade. Not the only thing.

So I think the breadth of the problem is something we absolutely have to keep in mind. And I think the Chamber needs to be extremely cognizant of that and not think that people are going to be

fooled into thinking that the Panama Papers is the problem and we deal with Panama and we can all go back to business as usual. But I think I'll leave it at that.

I mean, then the interesting thing is to look at all of these mechanisms. Of course, how is this done? Because what we do see also with the Panama Papers, this will just be my last point, is we see all of the different mechanisms: anonymous companies, trusts, all of these different ways that things are done. And to my knowledge, it's pretty much all in there. So we've got like the ultimate case study and now we just have to think about applying this and understanding that this is a global problem of humungous latitude, shall we say.

MR. HALL: And let me use my moderator's imperative to expound a little on the Panama Papers themselves and what they showed. So one of the things that was clear was that Panama drew mostly -- most of the documents are in Spanish, it's a Panamanian law firm. Most of their clients tended to be Spanish. The Russians were an interesting exception to this. But why weren't there more Americans? You know, there was a lot of murmuring after that. Are we hiding some information? How come you've got all these people in a -- a very well-known person I believe at this institution here posited that maybe the Russians were actually behind this whole leak and some crazy talk.

But one of the things that was really -- sorry, I don't mean to disparage anyone. (Laughter) But, I mean, when you're on the inside you know where this came from, so I do know where this came from. But one of the things that's striking: not a lot of Americans. The Americans who are in there were the kind of people you would expect in there. There was probably more than two dozen financial fraudsters pursued by the SEC, pursued by the Commodity Futures Trading Commission. These guys were in there. They weren't Bernie Madoff size, but they were significant: 50 million, 25 million. These are, you know, substantial frauds.

Some hedge funds, we did follow up stories on hedge funds. We did the Sovereign Society, which didn't break any law, but encouraged people how to use this offshore space. And then they drew in many people who were, in fact, convicted by DOJ shortly thereafter, sometimes in part of this, sometimes not. So, you know, there's a misnomer that Americans weren't involved when, in fact, there are plenty of Americans in there and many of them doing wrong. They're just not the scale of Vladimir Putin. So I think that's one thing.

What we don't know is if we got a leak of this size from a Cayman Islands registered agent or from the British Virgin Islands or somewhere like that, would the story be different? I don't know.

How many people out here have ever heard of Niue, N-I-U-E? I'm amazed because I had never heard of it before the Panama Papers. Did you know of it before the Panama Papers? So I'm pretty sure Senator Levin's office had looked at this at one point. But the Russians in the Yeltsin era were using Niue and Non-American Samoa. Most people didn't know there was a Non-American Samoa.

And then as the crackdown there, kind of the squeeze-the-balloon phenomenon, the Seychelles became a big issue. One of the documents we found in the Panama Papers was a spreadsheet of more than 14,000 companies created by Mossack Fonseca in the Seychelles. You know, she sells seashells in the Seychelles. (Laughter) They had internal correspondence back and forth between them that showed that they didn't know the beneficial owners of about 13,600. So they knew about 400 of them, they could identify ownership; the rest they couldn't.

Now, let's bring that back to Norm's part about the U.S. states. When we were doing -- one of our first state stories looked at Wyoming and Nevada and what that showed. And we actually found Russians, you know, have four different addresses all over, registered agents around Wyoming in a little place called Buffalo, Wyoming. So they're there.

And when you look on their actual incorporation documents, Wyoming required that they give a contact. Well, the contact in many cases, both in Wyoming and Nevada, was a shell company in the Seychelles. And we had the internal documents that showed Mossack Fonseca had no idea who owned these companies, yet these were the contacts. And these are the same people who are arguing the states should be left to -- you know, this is a states issue, we know best. And, in fact, they didn't know who the contacts were.

So Wyoming is now clarifying that. They've said it had nothing to do with the Panama Papers. Their own audit has led them to do that. Who cares what the reason is? They're now taking steps to have a real contact person.

Nevada, on the other hand, had a law that prevented them from knowing anything about - - they didn't audit any of their companies unless law enforcement came to them and asked them for information on this company. So they didn't want to know. By law they didn't want to know who was

setting up a company in the state.

So that is now being discussed in Nevada. The legislature there is looking at giving the secretary of state the power to at least independently audit for cause, but not necessarily driven by a law enforcement request. So that gives them a little more flexibility.

Delaware didn't quite answer our question on the audit and I can't tell you that I know what percentage or how they audit. They have the overwhelming number of incorporations, both domestic and foreign. And I'm not sure that's ever been real clear, so maybe Senator Whitehouse can share some thoughts on that.

So that was a bit of a diversion, but I just wanted to kind of give a little context to how that brings in.

Everybody reading the newspapers, Paul Manafort lately, right, is in the front pages of most of the big papers? He allegedly was paid by a bank in Kyrgyzstan through a shell company called Neocom Systems Limited in Belize. Right? Anybody ever try to get information from Belize? It costs \$25 -- let's see if I can show you this form here; somewhere in here I've got a little form -- \$25 and it tells you basically the date it was opened, the date it was closed, who the registered agent was, and their number. It doesn't tell you whether they've ever had a suspicious activity report. It doesn't give you any information on who the client was to the registered agent.

Why does that matter? Well, who set this up? Did Paul Manafort set it up? Did someone else set it up? Does Manafort have any tie to it? Who knows, you know?

What we've been able to determine is those dates of that company opened and closed correspondent to the dates that he was supposedly on the payroll of Mr. Yanukovich. That part has been admitted to by Mr. Manafort. I'm not alleging I know something that somebody else doesn't know with all the public information. But spend some time looking into Neocom Systems Limited. See if you can find anything about it.

When you call the Financial Intelligence Unit of Belize, they don't return calls. They have Mr. Kent Clare. For five days we haven't been able to get anybody to pick up a phone. They're in hiding basically, so kind of an interesting thing.

So let's talk a little bit about beneficial ownership. It seems pretty simple, right? Who

owns a company? Charles, I'll start with you, why is it difficult to -- well, actually let me go to Matt because he's been closer to this. Talk a little bit about the difficulty in actually coming to a definition of what a beneficial ownership is.

MR. EKBERG: Well, it's a big issue actually. But I think beyond the definition, I think we can talk a little bit more about that with the panel, I think it's more about how beneficial ownership standards are applied consistently on an international level, as well. So the FATF is very clear relative to beneficial ownership that there has to be -- you have to be able to clearly collect and access information on beneficial ownership in your due diligence work on a transparent basis. And it is across the FATF member states and it should be built out across broader than FATF, as well.

But the reality is, and this has been proven by the mutual evaluation reports of FATF, that this isn't always the case across all jurisdictions. And there have been a number of mutual evaluation reports, peer reviews over the several months and years that have shown this, that there's a great deal of problems relative to how beneficial ownership information is both put into central registries in countries or updated in central registries in countries; how certain financial gatekeepers, including law firms and company formation agents, are actually putting in -- or actually accessing or updating beneficial ownership information on their clients.

There's also the lack of sanctions on those who aren't actually dealing properly with beneficial ownership information.

So it's a question really I think we can debate what beneficial ownership means in a broader context, but, fundamentally, every country really does have to start looking at the FATF standards and adhering more closely to the FATF standards. Because this brings back to the context of how information flows through the international financial system and how banks are actually looking at this from a customer due diligence perspective. Banks have to have regulatory clarity, they have to have regulatory certainty in understanding their client base. And beneficial ownership information centrally registered and centrally accessible is a very key aspect to that.

MR. HALL: I'll turn to Charles.

MR. DAVIDSON: Sure, sure, yeah. Well, that's, of course, all true. I mean, in terms of the original question, though, about beneficial ownership, and it's a bit of a -- I don't like that term so

much. I prefer to talk about anonymous companies or anonymity because what we're talking about here is whether assets can be owned anonymously. And right now we have a system we see from the Panama Papers, since we're focusing on that as one illustration, where all sorts of malfeasance is carried out through anonymously owned companies.

And the issue of beneficial ownership, though, the really key thing to understand there in terms of the debate right now, I think, is that you absolutely have to drill down all the way to the real owner. So you could have legislation that goes one step beyond what we don't even have now, shall we say, which is let's say that Nevada or Delaware or whatever have to provide names of people who are supposedly the beneficial owners. Well, if those people aren't really the owners, but they're just representatives of the real owners, and those people are representing some sort of offshore trust in Belize, let's say, to take something really opaque, that has beneficial owners and then we can layer a couple other jurisdictions on there. We haven't achieved, we haven't broken the veil of anonymity. So we need to have some way of drilling down all the way to a true beneficial owner and that's not such an easy thing and it's going to require some international coordination and some real resolve.

The U.S., because of our power and our reach within the financial system, can lead on that. I mean, we lead with that CPA, the Europeans followed. We could take a very strong position of leadership. Instead, we're arguably the worst. The Swiss are squealing because the money is going from Switzerland here. We beat up on them, but now we're arguably the number one secrecy jurisdiction in the world.

And for those who want a resume of that, there's a remarkable article in the Financial Times from last spring by Kara Skannell, which lays out the detail of how we have become the world's leading secrecy jurisdiction.

AMBASSADOR EISEN: We are competing with Kenya. There's another academic study that found the U.S. is the second easiest country in the world after Kenya for terrorists and criminals to open anonymous shell companies to launder their money with impunity. The reason we're, you know, now climbing out of the basement there was a FATF review over the past year that found the U.S. in some respects, because of the complexity of the various tools, in some respects is doing better. But even when we do better, some of you may have followed the Geographic Targeting Orders pilot program that

Treasury did in a set number of jurisdictions. But even there what we found in checking these -- these were checks of title insurance purchases, when we actually kicked the tires Treasury found that fully 30 percent of those purchases were from owners, just the pilot program, 30 percent from owners that had suspicious activity reports filed on them.

So I think there is a profound -- the United States should not be lagging. And by the way, I was encouraged that the Trump administration had renewed that Geographic Targeting pilot program. The United States should not be trailing or at the back of the pack on this. And that is a larger lesson, I think, of the Panama Papers.

And if I may say one more thing about this, it's no longer an academic or an anonymous or a faceless discussion about kleptocracy because there's a real threat of oligarchic kleptocracy that has come to the United States. For the first time we have an oligarch ruling the country with a ruling family, insisting on maintaining ownership interest in their businesses, doing business across the United States and around the world, including with some very shady characters, some past business dealings with those who implicate FCPA issues. And this web of anonymous corporate ownerships, of LLCs and LLPs incorporated in jurisdictions or formed in jurisdictions where full disclosure is not required is serving to obscure the President's own business partners, business arrangements. When you look at the web of corporations and the many layers of ownership for some of the President's entities it's hiding, together with his refusal to do things like release his tax returns, it's hiding his ownership interest.

And make no mistake about it, that goes to the prosperity and the lives of everybody in this room and everybody who's watching on that camera. If the President is engaged, take the foreign entanglements, if the President is engaged and is receiving these large benefits through this web of partially shielded LLCs and LLPs because of the weakness of American law and the failure of America to lead, then we cannot trust -- we have to ask the question, is he really going to negotiate for American jobs and financial interests in a vibrant way when he's getting enormous benefits from China, for example, through these opaque corporate structures? We don't know. His son says that Russian cash is very, very important to his business operations, critically important. We don't know those exact cash flows. We're unable to untangle them because we don't have his taxes.

We do know that no major cash flows move out of Russia without, at some point in the

process, Putin's thumb on the stream of money. So this is now an issue of the most critical importance to every American, as well. It really hits home.

MR. HALL: Let me get Brian to jump in.

MR. O'SHEA: Sure.

MR. HALL: But let me give just a definition. The FinCEN who Norm is referring to defines beneficial owner as an individual who directly or indirectly controls 25 percent or more of equity interest in a large entity customer or single individual significantly responsible to control, manage, direct a legal entity or customer. The 25 percent is a threshold. I'm not sure everyone -- we'll come back to that.

MR. O'SHEA: Sure. And, you know, so on the topic of beneficial ownership and to give our perspectives because, again, how the Chamber's been involved in this has been primarily through legislation in the Senate over the years, but just to kind of help understand and educate exactly what is in the proposed legislation that's been in the Senate for several years. So to put it bluntly, it's a piece of legislation that is quite literally targeted at small businesses. Right? Public companies, banks, financial institutions would be exempt from reporting on their beneficial owners. So the 28 or 29 million small businesses in the country, the vast majority of which are law-abiding citizens, would be required to provide this information to state authorities and regularly update that information if it changes on a beneficial owner within 60 days.

Now, if you think about that, right, and if they make a mistake or if they are wrong or if they fail to report with a pretty low mens rea requirement that's in the bill, they're subject to potentially felony prosecution. Right? So think about that for a second. If you make a mistake on your paperwork, right, under the bill as we read it you are subject to potentially felony prosecution.

The updating of change in beneficial ownership information, if you're a small business owner and one of your employees has a stake in your company and they go through a divorce and as part of the divorce settlement their spouse now becomes a beneficial owner of the company, since you don't regularly probe into your employees' lives and you don't know that and you fail to report it, you would be subject to prosecution under the legislation. You in your mind did absolutely nothing wrong. Right? You don't think that you broke any laws. There was nothing nefarious going on. But this is the kind of over-criminalization that is being talked about with some of the beneficial ownership disclosures.

The other concern that we have in the Senate bill as it existed, you know, last Congress, there's a very loose definition of beneficial owner. I think the term is "substantial," someone who has substantial control over an entity. What does "substantial control" mean? We probably won't know until there's the first enforcement action. Unlike in FinCEN's customer due diligence rule, right, where there was a threshold, somebody that has control over 25 percent of the company, that's a more rigid definition, under the Senate bill there's an extremely vague definition of beneficial owners.

The other point I would make, and I know we had talked about this previously, but we are working under the assumption that if this information is provided by all of these businesses in the United States, at some point it will end up in the public domain, right, because it's not clear to us whether the Senate legislation supersedes any kind of state right to know laws. So you have to think about this, take it to the next step, right. If all of this information ends up in the public domain, who could potentially use this information for nefarious purposes? Maybe an enterprising state attorney general, right? Maybe trial attorneys who are looking to, you know, make a quick score.

So I think you kind of have to understand that, you know, again, as we read this, this is something that's going to end up in the public domain. It's not going to be something that's going to be kept private and only used in limited cases for law enforcement.

And kind of on that point, you know, I understand there's been a lot of the global agreements and, you know, a kind of understanding that countries should all implement these rules. But I want to make the point, you know, we have I think a very different notion of privacy in the United States than in other countries. And, you know, in fact, one of our partners in the past on this has been venture capital firms. Right? And you think about, you know, if you are a venture capital firm and you have an investment in a smaller growing company there's good reasons, benign reasons, nothing criminal for why you might want to remain anonymous, right, for obvious competitive reasons. And it's one of the reasons that they have, you know, kind of sided with us on our position on these issues.

And it's not just us. You know, we also partner with the American Bar Association, who's expressed a lot of the same views. Because under the Senate bill, you know, there would be a threat to attorney-client privilege because of lawyers who are involved in setting up a corporation. The Secretaries of State Association also has very much the same views as us.

So, you know, this is not business saying, oh, we don't want another rule. I think we all kind of have to think through the consequences of this, what it means for small business formation, what it means for privacy, and what it means for criminal liability for law-abiding citizens who did absolutely nothing wrong.

MR. HALL: I'm going to let the senator pick up on some of those themes. Before I go to Charles, let me just hit two points and then we'll go to Charles and then we'll have the senator come up.

So one point is that on this question of beneficial ownership the U.K., France, Germany, Spain, and Italy within the last -- since the publication of the Panama Papers have agreed to go to some sort of registry of beneficial ownership. I've queried the folks on the panel here and I don't think anybody knows whether they're using the same definition or what definition they're using, so that's one question in the international sphere that's kind of looming out there.

And then on this question of privacy versus how much we need to know, the GAO had a very interesting report in January that came out that showed that the government, GSA, the purchasing arm, the building leasing arm of the federal government, that one-third of GSA's 1,406 high-security leases -- that's Homeland Security, DEA -- one-third of them, a full one-third of them, had ownership that they couldn't determine, undetermined. And of the determined ownership, 16 foreign owners, 7 non-NATO owners, and the U.S. Mint ironically leases a building from Japan, so.

MR. DAVIDSON: Yeah. Well, no, I don't disagree with a lot of the details of the positions of the Chamber, that they are all objections or complaints or reasons for not doing such and such. So given that we face a geopolitical problem that is really a civilizational threat, and I don't think that's overstated, what the Chamber needs to do is to propose, not just object, but to address the problems that we face and propose some constructive ideas that are precisely less heavy and require less tree destruction since a lot of this stuff has to be printed than what other people are proposing. Go positive.

MR. HALL: As we bring the senator up here, just a note, some people in this room who I shall not name by name has been on this issue since 2005 when Carl Levin was trying to push this issue. Nothing has changed in terms of the debate over states have the right to do this, whether the federal government through IRS reporting should keep tabs on this. And we've had pretty much 12 years of gridlock on this issue.

So Senator Whitehouse is one who has, from the get-go in the last two years, really pushed this issue. And we'll let him answer a bunch of these things we've addressed up here.

MR. KLEIN: Thank you, guys. Thank you very much. Join me in thanking the panel for a lively and spirited debate. (Applause)

It's my great honor and privilege to introduce the Honorable Senator Sheldon Whitehouse, U.S. Senator from Rhode Island. You know, it's telling that Senator Whitehouse has earned a reputation not only as a fierce advocate for progressive values, but a thoughtful legislator, capable of reaching across the aisle to achieve bipartisan solutions.

The legislation that the senator has sponsored in the Senate on this issue of beneficial ownership has bipartisan support. In fact, we actually invited Congressman Peter King of New York, who was unable to come due to a scheduling conflict, but think about that. We invited Senator Chuck Grassley who shares some of these similar views.

This is a pretty far gap across the aisle. I'm not sure how many things you, Senator, and Congressman King would agree about in the world of the Judiciary Committee on which you ably serve, but this is one, you know, passionate progressive who is able to find common ground and enact thoughtful legislation. The senator spearheaded legislation to address the nation's opioid abuses, which was signed into law.

And a brief background. Once upon a time, the senator was an enterprising state attorney general. He was the attorney general from Rhode Island, elected in 1998, after a stint as U.S. Attorney. And then came to the United States Senate in 2006, and we're all better off for that.

Senator, thank you very much. (Applause)

SENATOR WHITEHOUSE: Thank you. It is a pleasure to be here as a former enterprising state attorney general. I look forward to continuing to work with the Chamber on this issue as long as they want to get to yes, which I think is an important consideration. And I do think that in the array of nefariousness that we face around the world right now, much of which is facilitated by shell corporations, enterprising state attorneys general are not very, very high up that list.

Earlier this month, Senator Lindsey Graham and I held a hearing on the Judiciary Committee's Crime and Terrorism Subcommittee, exploring Russia's interference in democracies around

the globe, originally in its former sphere of influence, then into Europe, and in this last election, obviously, into our American election. One of our witnesses was Heather Conley, who is a Russia expert at the Center for Strategic and International Studies, who wrote "The Kremlin Playbook," which is a CSIS report I actually commend to all of you. It's free, it's downloadable, and it reads like a novel. It's very good.

"The Kremlin Playbook" explains how Russia takes advantage of lax incorporation rules to spread its economic influence, which it then turns into political influence, basically by it identifies, according to "The Playbook," it identifies prospects in a country who are big business folks, who don't necessarily have sterling reputations and who have either political connections or political aspirations. And they enter into highly favorable, one might even say bribery type, business transactions with them, and then they have them on their hook. They can either continue to bribe them to do what they want or they can also set the hook and haul them out of the water by disclosing the crooked relationship that they have or threatening to do that, which puts their fish even more strongly on that hook.

And, of course, that's not the only report. Last year the Panama Papers exposed what many in the law enforcement and anti-money laundering world already knew, which is that we in the United States of America have now become a favorite destination for tax cheats, drug traffickers, terrorists, and other criminals from around the world seeking to form shell companies to hide assets and obscure illegal activities. So we are a target of that influence. We are also a facilitator of that influence by allowing that practice.

A shell corporation serves no economic purpose and conducts no real business. Instead, these companies exist to hold legal title to bank accounts, real estate, or other assets hiding the true human owners. America is becoming a haven for those who are doing mischief through a shell corporation. In fact, starting a shell corporation in this country can be easier than getting a library card. A library may actually require you to show up in person and sign for your card whereas you can form a shell corporation with a few clicks of a mouse and a modest online fee.

Currently, not one of America's states requires the disclosure of beneficial owners, the true human beings behind the companies. Instead, corporate records can identify the owner as just another shell corporation or the owner could be identified as a professional agent, who has been paid to sign the needed forms and never speak of them again. Or it could be a lawyer who refuses to disclose

his client, citing attorney-client privilege.

In my experience, there is not much attorney-client privilege around the fact of an attorney-client relationship. I litigated that matter in Rhode Island as U.S. Attorney.

Over the past few years, story after story has emerged detailing how foreign governments and criminal organizations have abused our lax incorporation laws. Even the Iranian government allegedly used a string of generic businesses to obscure its ownership of a 5th Avenue skyscraper. Profits from that enterprise helped fund Iran-backed terrorism for decades until a U.S. Government investigation finally uncovered the scheme in 2008.

Now let me tell you about that because it's interesting how it happened. Because states in America do not keep track of the real owners of companies formed under state law, the investigators couldn't untangle the complex and opaque web of shell companies that owned that skyscraper. Ultimately, investigators were able to connect those dots and tie Iran to the structure from a clue in corporate records kept on the Isle of Jersey. How is that for irony? A notorious tax shelter actually had better ownership records than we have in the United States.

Once Iran's involvement was uncovered, the Department of Justice could then move to seize and sell the building and to distribute the proceeds of that sale to American victims of Iranian-backed terror. After years of legal appeals, the victims are hopeful to receive this compensation.

Iran is not the only criminal enterprise hiding behind American shell companies. Other recently uncovered examples include a Mexican drug cartel that used an Oklahoma corporation to launder money through a horse farm; a crime syndicate that set up a web of corporations in 8 states as part of a \$100 million Medicare fraud scheme; and a human trafficking ring based in Moldova that hid its crimes behind anonymous corporations in Kansas, Missouri, and Ohio.

Back to the Panama Papers, over 11 million documents leaked from a Panamanian law firm revealed mischief conducted through shell companies, like a Brazilian politician facing corruption charges who purchased a \$3 million ocean-front condo in Miami in 2011. And in 2015, after a lengthy investigation, The New York Times uncovered that a Russian banker suspected of ties to organized crime purchased a nearly \$16 million condo in Manhattan's Time Warner Center.

The Financial Crimes Enforcement Network, a division of the U.S. Treasury Department,

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found that 30 percent of the cash purchases of high-end real estate by shell companies in 6 major cities that they looked at involved a suspicious buyer. Thirty percent.

One other little feature here is that when lax incorporation laws allow tax cheats and other criminals to hide assets in real estate, it does weird things in the real estate market. Some of the most affluent neighborhoods of our cities are filled with empty houses and apartments. In New York City's Lenox Hill neighborhood, for example, an estimated 40 percent of apartments sit vacant, they're hidden, absent investors inflating prices and contributing to housing shortages.

San Francisco has one of the tightest housing markets in the U.S., but nearly one-fifth of units in the South Beach neighborhood are unoccupied. Nearly a third of properties in Malibu are vacant as are half of the homes in San Diego's Oceanside neighborhood. With so many homes serving as glorified anonymous safe deposit boxes, the housing supply tightens, stretching the budgets of American families seeking to live in those areas.

The crimes being hidden may be complex and the asset concealment schemes may be elaborate, but the answer to the problem of shell corporations is simple: Have each state track who actually owns companies that they charter and make that information available to federal, state, and local law enforcement agencies through proper processes. Our Incorporation Transparency and Law Enforcement Assistance Act, which will soon be reintroduced, would direct states to require applicants forming corporations and limited liability companies to include basic information about the actual human beings who own the company.

The bill would provide funding to establish databases, to maintain and update this information. One of the concerns of the Secretary of State's offices has been this is more work and they don't have the resources for it. Okay, we'll help with the resources.

The information would be available to law enforcement officers who present valid court-ordered subpoenas or search warrants. The bill for that reason has strong support from our law enforcement community, from banks, and from anti-trafficking organizations.

Transparency in business ownership is not a novel idea. Every member of the European Union has committed to ensuring such transparency. The U.K., Spain, Germany, Italy, and France have already enacted their transparency laws. So the light of corporate transparency is about to shine on

criminal assets hidden in European shell companies, which means that a lot of money will be looking for new, dark homes. The United States of America should take swift action to make sure that these criminal assets don't wind up in opaque American shell corporations.

We are supposed to be an example of the world. Remember, the "City on the Hill?" Not a place where the world's most corrupt and criminal malefactors hide their cash and their assets. We know the Russian playbook involves exploiting opaque corporate laws to work its will in other countries. We know criminals and even terrorists view the United States as their haven to hide illegal activity. We know that lax incorporation laws are pricing Americans out of real estate markets and we must take commonsense steps to stop those activities and bring those wrongdoers into the light.

I'll close -- I should have brought the article with me, I didn't think of it, but there's a terrific news article about a woman who was married to a Russian oligarch and her divorce lawyer when they were divorced decided, you know what, I'm just going to dig for assets here. And his work opened a whole dark window, like going through the back of, what's it called, the wardrobe and into this weird Narnia land in which billionaires from around the world have a completely opaque system of tax avoidance, divorce payment avoidance, all sorts of avoidance, and there's an enterprise that is devoted to supporting it. It does no good. That is a true parasite on the economy of the planet. And to the extent that the United States is a part of it and, indeed, an increasingly central part of it, frankly, we should be ashamed of ourselves. (Applause)

MR. KLEIN: Thank you, Senator. I appreciate the New England roots with the shining city on a hill because there really should be a spirit of Ronald Reagan, also. You're tapping --

SENATOR WHITEHOUSE: He knew good material when he saw it. (Laughter)

MR. KLEIN: You know, we want to believe in American exceptionalism in some ways now more than ever. But as you pointed out and the previous panel mentioned, so many other countries all through Europe, all through the industrialized world have made this change a year after the Panama Papers, but here we are, and it seems, to some degree, like very little has changed. There's been some good work going on behind the scenes, perhaps at the Treasury Department in the regulatory world.

But, ultimately, the core question is one year post Panama, why do you think things haven't changed? And do you think they will in the next year?

SENATOR WHITEHOUSE: Well, there are two very significant constituencies who support continuing the status quo. One is the billionaires who take advantage of these schemes and the second is the array of law firms and accountants and other service organization folks who have developed very lucrative practices servicing that illicit marketplace. So they're pretty anxious about that particularly nefarious livelihood that they earn. I don't think that their voices are entitled to much weight in this conversation, but there they are.

MR. KLEIN: What kind of optimism do you have with a bipartisan group and the kind of strange bedfellow coalition that you're assembling to change this?

SENATOR WHITEHOUSE: Well, Chuck Grassley is my principal Republican co-sponsor. He's the chairman of the Judiciary Committee, so it's very significant. He can call hearings and so forth as we go forward.

The recent news about the way that the Kremlin messes around to intrude into the politics of other nations has added an entirely new dimension to this. I did not know until I read "The Kremlin Playbook" in preparation for Lindsey's and my hearing that incorporation transparency was singled out by CSIS as one of the vehicles through which Russia applies its maligned forces. So that creates a whole new national security element to this that it didn't have before. It was more, you know, we shouldn't be the haven for crooks. We're the United States of America, for lord's sake. Now it's actually -- this is a weaponizable weakness to harm our society and to enable it to be corrupted and to be so for deliberate political purposes by Putin, who has this in his playbook. So I think that will add considerably more interest.

MR. KLEIN: Well, let me ask one more question and then I want to engage the audience because you can't have been sitting here for this time and not feel the kind of ideas coursing through you. You said something really fascinating about the impact of this on people that resonated with me about real estate.

So in the summer right on this very stage we hosted an event on affordable housing with Norman Lear, famed TV producer, who had just completed a new documentary looking back on parts of New York and the affordable housing crisis as he described it. And, in fact, one of the scenes in his video that he discussed were these luxury apartments getting bid way up by foreign owners who never set foot,

which then has a whole domino effect on markets. Part of real estate is, you know, price is relative. And that this was happening, he thought, not only in New York, but in Miami and you point out San Francisco and other markets. And that trickles all the way down into the prices that we pay in terms of our housing.

SENATOR WHITEHOUSE: Yeah.

MR. KLEIN: I've talked and written about the impact this has on banking and bank fees and the cost of bank accounts and the difficulty sometimes in banking people because of these high AML/KYC costs. Could you talk a little bit about, from your experience, what the effect is for the ordinary American, right? I don't think anybody in this room is using anonymous shell corporations to shield their assets, but how are we all affected by this prevalence?

SENATOR WHITEHOUSE: Well, if you're in one of the areas in which this big hidden money likes to create its real estate safe deposit boxes, then your apartment is being priced up and that means that what you could afford is nowhere near as nice as what you should have been able to afford. So every day you go home, you go home to a smaller apartment than you would have been able to rent or buy otherwise because of this illicit competition.

It means that your taxes are probably higher because a considerable amount of this effort is dedicated to dodging tax payments. So if your taxes weren't going to go up, then guess what. Your federal deficit did. So one way or the other the general public pays for the tax avoidance schemes that are supported by all of this.

And then I'll take a little diversion here because I think at the broadest level I'm the son, grandson, and nephew of Foreign Service officers. So I have a perspective from that about America's role in the world. And the world is a pretty corrupt place and poorer nations are often the most corrupt ones. There is going to be a day of reckoning when it looks too people in those counties like their national assets have been looted, that they have been impoverished, that the world allowed their ruling classes to steal everything that wasn't nailed down, and instead of attending to that as a national or international emergency, had some of the slimiest operators in our economy come jumping in to say let's make money off that, let's facilitate that. I want to be a part of those deals, and hiding the money. That's a hard accountability moment that I think we are going to face unless we are more proactive at cleaning up this mess.

There is real suffering around the world as a result of the thievery, the kleptocracy that all of this stuff facilitates. And that suffering is not something that we should overlook, not if we want to be the "City on the Hill."

MR. KLEIN: Great. Folks in the audience, let's open it up for questions. Sir? If you could identify yourself. I only have two requests: identify yourself and ask a question.

MR. SHERRETTA: Robert Sherretta with International Investor. We've been studying this issues for some 20, 25 years, as well. Let me just mention three quick reasons why we think it's getting worse.

The first is we heard someone mention earlier that our banking yesterday has been forced to make at least reporting requirements. The problem is we're seeing the shadow banking industry has now grown beyond traditional banking.

The second, we're seeing this entire role of money laundering moving around the world. The Pacific is now becoming one of the biggest regions, starting to compete with offshore districts in Europe, as well as the Caribbean and elsewhere.

And thirdly, one of the things not mentioned today, and we think it's important, the intelligence apparatus in many of these countries assist at least people at the government level to keep records secret. And we can see the same problems emerging here, top security being assigned to a lot of records.

Let me bring this to one simple question. You are in Congress. Are you satisfied that Congress people themselves, including their family members and including their staff members, are now fully complying with all the transparency that is necessary in this world when it comes to hiding assets?

SENATOR WHITEHOUSE: As far as I know. I can't necessarily speak to family members who aren't part of congressional reporting. Somebody may have an aunt who is not part of -- so I can't speak to that. But I suspect that the regular reporting that's required of all of us would catch most of this. I do not know and, whether happily or sadly --

MR. SHERRETTA: You doubt that.

SENATOR WHITEHOUSE: -- I'm not in a position where it's a question I have to face.

MR. KLEIN: Other questions in the audience? Sir?

MR. MORMON: Sure. Hi, Ted Mormon, independent. What can we learn from the process that legislation was enacted to get rid of shell banking? I guess at one time my understanding is that shell banks were prolific and then legislation was passed that said financial institutions can't do business with shell banks, and then they essentially disappeared.

SENATOR WHITEHOUSE: Well, I guess one can take some confidence that if you could pull the political coalition together, the mere fact of something's existence doesn't keep it alive indefinitely and that bad behavior can be terminated. I hope we can get there here. And, you know, I think it's pretty significant.

MR. KLEIN: I can tell you, being on the staff of the Senate Banking Committee when Title II of the PATRIOT Act was enacted, which was a major change in the anti-money laundering system, I can tell you very safely that on September 10th, none of us thought that we'd be passing major, new, anti-money laundering legislation in the coming months. Luckily, a lot of work and thought had been done previously about what a solution like that would exist. So legislation that's been proposed and publicly debated, even if it's not in the process of moving, serves a vital role because the ability to predict what external impact or factor would happen to drive, who can possibly know?

Some might have thought a year ago the Panama Papers would have been that event. We don't know. We don't know what that next event may be.

SENATOR WHITEHOUSE: One difference from the political side is that since January of 2010, we have seen the explosion of unlimited political spending thanks to Citizens United, which is one of the worst decisions that the United States Supreme Court has ever rendered in my opinion. It's right there with Lochner and Plessy as a real stinker. (Laughter) And in the wake of that decision, the entities that are able to make anonymous political spending possible have had their aperture opened up so that they can make unlimited anonymous political spending possible.

So the very forces of immense wealth who want to hide from taxes, who want to hide from spouses, who want to play these kinds of games have the ability now to apply that power directly to the political process in a way that they take no responsibility for. They launder it through a donor's trust or they launder it through some other 501(c)(4) organization and, the next thing you know, they're showing up in people's races saying you can't vote for that and there's a million bucks to your primary

opponent if you get anywhere near that stuff.

That's not always going to work, but it's a force that I think we should reckon with.

MR. KLEIN: Kevin, do you have a question?

MR. HALL: I just had a quick follow-up one. We heard on the dais up there from the Chamber that perhaps there's been a heavy-handed approach that the good are suffering for the few. Can you talk a little bit about how you want to address that narrow issue of not going overboard? And foreign policy and, you know, Aaron mentioned 9-11, well, the Panama Papers showed just about every imaginable wrong happening right under the noses. And if you actually were in those papers you'd see that everything you thought bad guys might say, they actually did say in emails.

SENATOR WHITEHOUSE: Yeah.

MR. HALL: So what does it mean national security-wise and why is it so intractable?

SENATOR WHITEHOUSE: Well, where it comes to excessive prosecution I think we should have a conversation about that and we can sit down as lawyers and work through what the various tripwires should be before prosecutions of various kinds could be brought. The purpose of the bill is transparency, not punishment. So, obviously, there has to be some enforcement mechanism to make sure people don't just laugh at it, but that's not really the thrust of the bill. So you're not cutting its heart out if you make adjustments in the way in which penalties are applied. So I don't see that ultimately as being a problem as long as folks are negotiating in good faith.

Where you're dealing with the people for whom their business proposition is to facilitate this dark market, tough bounce. As far as I'm concerned, go get honest work. I'm not going to whittle back the bill to protect people who do that. Frankly, you know, I've got something of a law enforcement background and, to me, they're not a whole lot better than pimps or drug dealers in suits. So to defend their business model, I'm not all that interested.

Then you've got the larger perspective that this facilitates enormous amounts of really dangerous criminal behavior. The Moldovan group that I was talking about was selling kids into prostitution, and they can do that stuff and make a huge amount of money doing that stuff because they can keep that money and hide it appropriately. And so it's not as if this is an issue in which the harms are all on one side. I would argue that the harms of going forward are very small and the rewards of going

forward, the alleviation of harm through going forward is going to be much, much, much, much greater.

And as international crime has become an international phenomenon, we're a long way from Al Capone or John Dillinger racing across state lines to get away from the Ohio State Police or whatever. There are now international criminal syndicates that make hundreds of millions, even billions of dollars and they are a predatory cancer on the entire planet at this point. And they exist and are supported by this network of dark transactions and dark dealings. And they're kind of an enemy. It's like the next group of gangsters at a global level. And as long as we're allowing them to behave this way to hide their ill-gotten gains, what are you going to get? More gangsters.

MR. LOCKDANE: Thank you, Senator. First of all, thank you for being here.

SENATOR WHITEHOUSE: My pleasure.

MR. LOCKDANE: Pleasure listening to you as a former resident of Pawtucket.

SENATOR WHITEHOUSE: All right.

MR. LOCKDANE: And my name is Mike Lockdane. I'm currently retired.

SENATOR WHITEHOUSE: We're not going into limericks, are we?

MR. LOCKDANE: No, thank you.

SENATOR WHITEHOUSE: Good, okay. Just checking.

MR. LOCKDANE: As a former agent, retired agent, I remember bringing cases to Linc Almond when he was your predecessor way back when.

SENATOR WHITEHOUSE: Yes, he was.

MR. LOCKDANE: You mentioned --

SENATOR WHITEHOUSE: Thank you for your service.

MR. LOCKDANE: I'm sorry. Well, thank you. Referencing Title III, you mentioned the PATRIOT Act. That was probably the last most significant statute or laws that came out relative to dealing with anti-money laundering. But on top to that, we now have the Financial Crimes Enforcement Network, we have coming out next year the enactment of a regulation which is driving 25 percent requirement of disclosure of beneficial ownership to the banks and financial institutions. Many feel that that's way too high a percentage, that, in fact, there's many banks in Miami that are at 10 percent, not at 25, because they think that, frankly, they'll just change the rules of the game in order to get around the 25

percent.

And the third point to the question is the international element you've mentioned. That's always been the biggest impediment, the ability to effectively collect quickly information internationally. Do you see anything developing in the form of statute, treaty, international cooperation that's going to improve disclosures on beneficial ownership? Should we be at 10 percent instead of 25? Or any new statutes or recommendations that are going to come out to improve international cooperation?

SENATOR WHITEHOUSE: Just to answer very generally, I think we should be at more not less disclosure, that the amount required to trigger the disclosure requirements should generally be low. And I do think that good work has been done internationally to try to improve coordination among different countries when they're investigating international criminal conspiracies and to be able to trace assets and so forth through FinCEN and other places. I think that can continue to improve, but I've seen really marked improvement in the last 15, 20 years from them and it needs to continue.

You know, they're improving, too. As we allow our law enforcement officials more capability in order to run them down, they just take it to the next step and figure out the next dodge. So we've got to make sure that we're empowered constantly to keep after them.

MR. KLEIN: I think we had a question over here. Next over here.

MS. HARLEY: Hello. Susan Harley, public citizen. Thank you, Senator. Appreciate you being here.

We heard someone mention earlier that Geographic Targeting Orders that were just expanded and extended by the Financial Crimes Enforcement Network, so wondering whether or not you see any openings with the Trump administration, whether or not, I mean, if your Republican colleagues have been speaking to the administration on this. Just wanted to hear your thoughts on that.

SENATOR WHITEHOUSE: Yeah, I don't -- I've got nothing on that at this point. The present dearth of subcabinet appointees makes it hard to have anybody to talk to. I think when -- I think Rod Rosenstein is going to be confirmed with acclamation and soon, and when that happens we'll have somebody at DOJ to talk to who can be at a policy-making level. And similarly, if they fill out in Treasury, we'll have more opportunity for that. But there's been a long stall while those empty offices sit there with nobody to make the decisions or answer the calls.

MS. LOWE: Thank you. Heather Lowe with Global Financial Integrity. Thank you very much, Senator, for being here.

SENATOR WHITEHOUSE: My pleasure.

MS. LOWE: So we've heard that, you know, secretaries of state have been the main opposition against movement in this area for years and we understand that that's had a real chilling effect on members of Congress in moving in this area because the secretary of state position is actually quite highly political in many states and has a control on elections. So what do you think it takes to overcome that influence? Because, you know, we're not seeing that most members have an objection to working on this otherwise.

SENATOR WHITEHOUSE: There are two objections that I see. One is that states that have had significant budget shakeouts in the last decade basically, since the big crash of '08, look at a new task that they have to do and think, oh, my gosh, please, not another task. And there hasn't been a model that I'm aware of yet developed of actually this is pretty easy, here's how you do it, and kind of calm of them down, walk them through it. The funding through this I think will help and I think getting a few models going will help. And I think that as a concern is a fairly low order of concern.

You've got states like, to be quite specific, Delaware that have as a brand and as a state money-making strategy to be the home for corporations to come. And what they've provided over many years is efficiency, certainty, and so forth, so they've kind of earned their keep. But I think there's also been an element of we'll keep your secrets, too. That's part of the deal here. And that they fear losing some competitive advantage against other states in doing that.

That's a more acute problem for them, but it's also, by definition, one that does not spread across all 50 secretaries of state because for every winner, like Delaware, that attracts corporations because of promises of secrecy in addition to other things, there are other states that didn't attract that very same corporation. So I don't see that as being all that significant of a stopper. It's real and we have to work through it, but I think there are ways to solve both of those problems.

I actually think that the backdoor influence of the law firms and the accountants, the support network for this dark network is as bad a political problem as the secretaries of state. They're just obviously not out front saying, hi, I make my livelihood supporting international criminals. Don't take my

job away. (Laughter)

MR. KLEIN: You know, building on that, to the extent revenue derives to states that seek this as a cottage industry, like Delaware, per your point then they get to put their taxes lower, so they can have no sales tax, which then attracts consumers and shoppers away from neighboring states, like Maryland, to then conduct business there, which then hurts a small merchant in Maryland by this cottage industry. So these things connect in ways that one might not appreciate. I mean, there's a political difference between diffuse losers and concentrated winners, which my friends in political theory will explain how one group becomes a much more salient advocate than another in the political process. But don't for a moment think that we're not all affected.

SENATOR WHITEHOUSE: We're all diffuse losers. (Laughter)

MR. KLEIN: Somehow that didn't sound as well.

SENATOR WHITEHOUSE: As good, didn't it? No, not right.

MR. KLEIN: So we're nearing the end, so let me see if we can do a lightning round of folks who have questions. In the back, sir, and then we'll see who else, if anyone else if we have time. This gentleman over here and then three, so we'll do these three maybe together.

MR. WEMPEN: Rex Wempen, Northern Resource. Senator, thank you for coming today.

SENATOR WHITEHOUSE: My pleasure.

MR. WEMPEN: Briefly, every prosecution comes from prosecutorial discretion. What about the private victims of the crimes that you describe? Would you support a private right of action under the FCPA for them, for people whose losses don't become enough of a political issue to achieve prosecution by the state? Thank you.

MR. KLEIN: Here.

SENATOR WHITEHOUSE: To tell you the truth, I hadn't thought about it, but, in general, I think private rights of action for people who are overlooked by the establishment is a healthy thing. So, please, that guy with a similar haircut to yours, Jess Garrison, is from my staff and is right behind you.

MR. HAYS: Thank you, Senator Whitehouse, for your leadership on this and for being here. My name is Mark Hays. I'm with Global Witness.

My question has to do a little bit with the business case for beneficial ownership transparency. Specifically, we and our allies here in the U.S. working on this issue have been really heartened in just the last 6 to 12 months with increasing calls for action from the business community, whether it's the clearinghouse association representing bankers or a group of investors representing about 740 billion in assets, and there are a list of more. Predicated on the notion that businesses actually suffer from lack of transparency in their supply chains, they are victims of fraud, as well. So it's a domino effect that is changing the political will and landscape as we speak.

So give that, my question for you is who are some other voices in that space or in similar spaces that you think you or your colleagues, particularly your colleagues on the other side of the aisle, need to hear from to continue to build that political will?

SENATOR WHITEHOUSE: I don't have a good answer to that, but, I mean, I know that the banking community has supported us through this, and if there are others I have every interest in reaching out to them to make sure that folks hear from them. It shouldn't be too diffuse of an interest to get their attention, but I think there are people for whom this is a contingent liability that they have to worry about because they themselves have reputational risk about what's on the other side of the shell corporation.

MR. KLEIN: Great, and I think we have one more question over here.

MR. KRAUS: Senator, thank you so much for your leadership on this issue, really appreciate it. My name is Joe Kraus with the ONE Campaign.

There are a lot of people in this room who have been working on this issue for years and, collectively, we've reached out to business groups that represent a significant number of small businesses across the U.S. And one of the arguments that's often made by the U.S. Chamber and was made again here today was that this beneficial ownership transparency would negatively impact small- and medium-sized businesses, and that's not what we've been hearing from businesses that we've spoken to. So I'm just curious if you're hearing those arguments --

SENATOR WHITEHOUSE: Yeah, I don't see that.

MR. KRAUS: -- in Congress and what your views are about that line of argumentation.

SENATOR WHITEHOUSE: I have not heard that and I have not heard that from

anybody in Rhode Island small business community. In our small business community people are going about their jobs trying to make ends meet and doing their thing, making their products, serving their customers, cutting the flowers, getting out the dry cleaning, doing whatever it is that they're doing. I don't think the concept of shell corporations really crosses their minds.

I think the issue here is largely of very, very wealthy interests who are kleptocrats who've robbed their countries, who are international criminals who have to hide their assets, who are hugely remunerated individuals who want to avoid taxation. That's the group that is really at the heart of this and whose interests will be prejudiced. And I don't think my Rhode Island small businesses are very sympathetic to any of them, particularly when they have to pay more in taxes or face more in deficits because these other people are succeeding at not meeting their responsibilities as citizens.

MR. KLEIN: I'd add that there are thousands of small banks that are having to deal with high levels of AML and KYC and various levels of compliance and regulation on the banking side who would actually be beneficiaries of a simplified structure. And at least from my experience small banks do pretty well in their representation in Congress.

On that note, I think let's --

SENATOR WHITEHOUSE: May I say a closing word in appreciation of wonderful Carl Levin, who has left the Senate, but a good deal of his legislation lives on? And I feel very honored to be carrying on his tradition with this legislation. He was an unusually smart and principled person, even by the standards of the smart and principled people who serve in the Senate. (Laughter) And it's just a nice thing to recall his great work amongst all of you.

MR. KLEIN: Thank you. And thank you for your great work, Senator Whitehouse. And thank the panel. (Applause)

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