

COMBATING KLEPTOCRACY WITH INCORPORATION TRANSPARENCY

HEARING BEFORE THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE ONE HUNDRED FIFTEENTH CONGRESS FIRST SESSION

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COMBATING KLEPTOCRACY WITH INCORPORATION TRANSPARENCY

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COMBATING KLEPTOCRACY WITH INCORPORATION TRANSPARENCY

October 3, 2017

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The hearing was held at 2:36 p.m. in Room 562, Dirksen Senate Office Building, Washington, DC, Hon. Sheldon D. Whitehouse, Commissioner, Commission on Security and Cooperation in Europe, presiding.

Commissioners present: Hon. Sheldon D. Whitehouse, Commissioner, Commission on Security and Cooperation in Europe; Hon. John Boozman, Commissioner, Commission on Security and Cooperation in Europe; Hon. Jeanne Shaheen, Commissioner, Commission on Security and Cooperation in Europe; Hon. Gwen Moore, Commissioner, Commission on Security and Cooperation in Europe; and Hon. Benjamin Cardin, Ranking Member, Commission on Security and Cooperation in Europe.

Witnesses present: Charles Davidson, Executive Director, Kleptocracy Initiative, Hudson Institute; Patrick P. O'Carroll, Executive Director, Federal Law Enforcement Officers Association [FLEOA]; Caroline Vicini, Deputy Head of Delegation, Delegation of the European Union to the United States; and Gary Kalman, Executive Director, FACT Coalition.

HON. SHELDON D. WHITEHOUSE, COMMISSIONER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mr. WHITEHOUSE. Thank you, everyone. My apologies for being a little bit late. I am very, very grateful to the panel for being here and to Chairman Wicker for working with me to hold this hearing on combatting crime and corruption through increased transparency.

From 2012 to 2015, the Azerbaijani Government reportedly funneled 2.5 billion euros from four U.K.-based shell companies, through an Estonian branch of a Danish bank, to bribe European politicians and Azerbaijani elites in a scheme dubbed the "Azerbaijani Laundromat." According to a report from the Organized Crime and Corruption Project, the money bought silence during a time when the Azerbaijani Government, and I quote, "Threw more than 90 human rights activists, opposition politicians, and journalists into prison on politically motivated charges."

The Azerbaijani Laundromat is not a unique scheme. In 2015, the Panama Papers exposed what many in the law enforcement

and anticorruption world already knew, that corrupt officials, tax cheats, drug traffickers, terrorists and criminals from around the world routinely use shell companies to hide assets and obscure illegal activities. America's lax corporation laws have made the United States a favorite destination for money laundering. Make no mistake, we are now a facilitator as well as a target in this racket.

With every passing day, we learn more about how Russian and Russian kleptocrats exploit opaque business laws to hide the ill-gotten riches, bribe corrupt officials, and undermine the world economy and democratic institutions. Heather Conley at the Center for Strategic and International Studies [CSIS] wrote in her report, "The Kremlin Playbook," that corruption is the, quote, "lubricant" with which the Russians operate. CSIS warns that to fight the corruption that gives Russia this channel of influence, and I quote them, "enhancing transparency and the effectiveness of the Western democratic tools, instruments and institutions is critical."

Russian kleptocrats, foreign drug dealers, and international tax cheats all use the same tool to launder their ill-gotten gains and evade law enforcement: the shell corporation. A shell corporation serves no economic purpose and conducts no real business. Instead, these entities exist to hold legal title to bank accounts, real estate, or other assets hiding the true owners. America's a haven now for those doing mischief through shell corporations. It fact, starting a shell corporation in this country can be easier than getting a library card.

Currently, no state requires the disclosure of beneficial owners, the real human beings who own the companies. Instead, corporate records can identify the owner as just another shell corporation or a professional agent who was paid to sign the needed forms and never speak of them again, or a lawyer who refuses to disclose a client, citing attorney-client privilege. We have seen over and over how foreign governments and criminal organizations have abused our lax incorporation laws.

The Iranian Government used a string of generic businesses to obscure its ownership of a 5th Avenue skyscraper. A Mexican drug cartel used an Oklahoma corporation to launder money through a horse farm. A crime syndicate set up a web of corporations in eight states as part of a \$100 million Medicaid fraud scheme. A human trafficking ring based in Moldova hid its crimes behind anonymous corporations in Kansas, Missouri and Ohio. Then, there are the Panama Papers, over 11 million documents leaked from a Panamanian law firm. They reveal mischief conducted through shell corporations like the 2011 purchase of a \$3 million oceanfront condo in Miami by a Brazilian politician facing corruption charges. 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. FinCEN, the Financial Crimes Enforcement Network, a division of the U.S. Treasury Department, found that 30 percent of the cash purchases of high-end real estate by shell companies in six major cities involved a suspicious buyer—30 percent. With so many properties serving essentially as lavish safe deposit boxes, the housing supply tightens, raising costs for American families.

The crimes being hidden may be complex and the assets they conceal may be elaborate, but the answer to the problem of shell corporations is simple: Require private corporations to report and update their beneficial ownership information. I've introduced legislation with Senators Grassley and Feinstein that does just that. Senators Rubio and Wyden have also teamed up on related legislation. Transparency into shell corporations is not a novel idea. As we will hear from the panel, every member of the European Union has committed to ensuring such transparency. The United Kingdom has already implemented its own transparency law.

The light of transparency is about to shine on criminal assets hidden in European shell companies, which means that lots of money will be looking for new, dark homes. We cannot let America become that new, dark home for corruption and crime. In the year 1630, John Winthrop told his fellow early settlers that we must always consider that we shall be as a city upon a hill. The eyes of all people are upon us, he said. If we become the new, dark home, I fear we will risk losing our place as that city on the hill, as a beacon of justice. In the global battle of ideas, chaining our American reputation to international crime and corruption is a self-inflicted stain that we do not need.

So I'm delighted to have this hearing today. I look forward to hearing from our distinguished witnesses. And I'm delighted that Senator Shaheen and Senator Boozman have joined us. Everybody's full statement will be made a matter of the record, so if you can leave your spoken remarks to less than five minutes, we'll have more time for back and forth.

Please proceed, Mr. Davidson.

CHARLES DAVIDSON, EXECUTIVE DIRECTOR, KLEPTOCRACY INITIATIVE, HUDSON INSTITUTE

Mr. DAVIDSON. Certainly. Thank you.

Acting Chairman Whitehouse, Co-chairman Smith, and members of the Helsinki Commission, thank you for inviting me to testify today. I would also like to thank Paul Massaro, staff of the Commission, for helping to arrange this important discussion. My name is Charles Davidson and I am the executive director of the Hudson Institute's Kleptocracy Initiative, which researches how authoritarian regimes and globalized corruption threaten democracy, capitalism, and security.

Kleptocracy, the business model of 21st century authoritarianism. Today, the most dangerous threat to our national security is the aggression of authoritarian regimes that actively seek to undermine our freedom and democracy, and to export authoritarianism into the OSCE region and around the globe. And let us not be mistaken: What is at stake is the survival of our civilization. These regimes have already upended the post-World War II international order via invasion and violation of treaties, perverted a rules-based global system of relatively fair economic exchange via intellectual property theft and corrosive business practices, and attacked our government's computer systems. And these regimes are sharing best practices and increasingly behaving like an axis of evil.

The most important thing I want to bring to our attention today: It is essential to understand that these authoritarian regimes have all adopted the business model of 21st century authoritarianism, a model whereby those who govern—usually a very small group, family, or even individual—loot their own country and store the proceeds in free and democratic nations such as ours, whose rule of law and reliable institutions serve to protect their ill-gotten gains. That business model equals kleptocracy. So 21st century authoritarianism, and all the threats that it poses, cannot be dissociated from kleptocracy. They have tied the knot. Where we find one, we find the other. And the situation is serious. Authoritarian kleptocracy has been growing, while freedom and democracy has been in recession.

But the authoritarian/kleptocratic model has an obvious vulnerability. Given that kleptocratic loot is stored within our shores, we have huge leverage over this business model. The problem is, we often don't know where they've stored their loot, due to the ease with which one can establish anonymity of ownership. And we, the United States of America, are the easiest and safest place to establish anonymity of ownership. For a superb summary of this disgraceful situation, I recommend Kara Scannell and Vanessa Houlder's piece in the Financial Times published May 8th, 2016, "U.S. Tax Havens: The New Switzerland."

As a general proposition, as an overarching challenge our society faces, as a fundamental existential issue for our civilization as we know it, it should be obvious that we cannot push back and reverse the authoritarian surge while being the bankers, lawyers, yacht builders, luxury lifestyle purveyors, to those who seek the destruction of freedom and democracy.

Kleptocracy, a vector of political decay. How is kleptocracy undermining our freedom and democracy, promoting political decay? When the kleptocrats come here, they bring along their values, which are not ours. We were naïve. We thought their offspring would go to school here and become freedom and democracy lovers. That hasn't happened. Instead, the kleptocratic life-juice of only valuing money and power has perverted our system. Kleptocratic regimes have become increasingly adept at purchasing many of the less morally vigilant members of our elites. In Europe, this is often referred to as schroederization. And this pimping is often done surreptitiously, via obscure ownership structures where beneficial ownership is not known, providing among other things plausible deniability. Does that sound familiar?

Kleptocracy, we incentivize it. As I said in testimony last December to the House's Subcommittee on Europe, Eurasia, and Emerging Threats, "Providing a safe haven for the proceeds of corruption establishes an incentive for corrupt practices. In my view this question of incentivization has been neglected, and is key to understanding the overall political challenge faced in terms of reform."

Anonymous companies, the asset protection they provide assured by our rule of law and reliable institutions, incentivizes kleptocracy. We must take away the punch bowl. And we must be aware of the struggles of those trying to escape a kleptocratic past, and the role played by our European allies.

Ben Judah, in “How Offshore Finance Sank Western Soft Power,” that appeared in *The American Interest* May 8th, 2014, quotes Daria Kaleniuk, head of Kiev’s Anti-Corruption Action Centre—she still is head of this—“What we found was that the money stolen in Ukraine was heading into British and European tax havens and hidden using shell companies inside the European Union. This was very uncomfortable to find out. What we felt is the Western elites were being hypocritical to us—preaching anti-corruption but allowing this.”

Judah quotes Mustafa Nayem, one of the leaders of the Maidan Revolution: “Why do they only now investigate the hidden fortunes that were stolen and hidden in Austria and in Switzerland? We told the Europeans and we told their embassies a hundred times this money was stolen and hidden in their countries. And nothing happened. Now that the regime has fallen, they suddenly—in a matter of days—can reveal the stolen money. But why did they not do this before? They are guilty—guilty of leaving us alone with these thieves. They are guilty of allowing them to plunder us.”

As per my above referenced congressional testimony, “As Western diplomats struggled to impress on Kyiv’s politicians, the value of the rule of law, Ukrainian elites,”—and elites really should be in quotes, pardon me—“were stashing wealth in the West. This happens across Eurasia, where authoritarian elites now treat London, New York, and other Western jurisdictions as corruption services centers.”

And what of the demand for better government and democracy in such a situation? As Francis Fukuyama said introducing Senator Carl Levin at a conference organized by Global Financial Integrity in 2008, “There can be no demand for democracy if all the rich people, if all the elites in the country, can manage to protect their own private fortunes. They have no reason to work with other people to resist the government, to demand democracy, to demand accountable government. There’s no demand for less corrupt government because everybody has taken care of themselves as an individual and it delegitimizes democracy . . . anything that can be done to reduce the ability of people to transfer assets and to avoid the sovereignty of the state, it seems to me, is very important.”

As we know from the difficulties of asset recovery efforts, including our Department of Justice’s Kleptocracy Asset Recovery Initiative, it is often very difficult to find assets hidden via anonymous companies. We must stop incentivizing corrupt and kleptocratic practices.

Kleptocracy: reform, or submit to tyranny. As described, the anonymous ownership of assets is a dirty secret behind the rise of authoritarianism. We must dramatically curtail secrecy in the ownership of assets: abolish the anonymous ownership of assets in the United States of America and, further, pressure other jurisdictions to do the same. We have the power to do it, and if we clean up our act here it will lay the groundwork for improving what is a global cancer.

Thank you.

Mr. WHITEHOUSE. Thank you, Mr. Davidson.

Mr. O’Carroll, thank you for bringing the perspective of the Federal Law Enforcement Officers Association. You may proceed.

**PATRICK P. O'CARROLL, EXECUTIVE DIRECTOR, FEDERAL
LAW ENFORCEMENT OFFICERS ASSOCIATION [FLEOA]**

Mr. O'CARROLL. Good afternoon, Acting Chairman Whitehouse, Senator Shaheen, Senator Boozman, and Representative Moore.

I am the executive director of the Federal Law Enforcement Officers Association, or FLEOA, which is a not-for-profit, nonpartisan, professional association which represents more than 26,000 federal law enforcement officers and agents from 65 federal agencies.

FLEOA applauds your Commission's focus on incorporation transparency, the prevention of money laundering, and the financing of criminal enterprises and terrorism. FLEOA agrees with the report of the Financial Fraud Task Force and its findings that the United States has many laudable anti-money-laundering efforts, but also has serious gaps in law enforcement's ability to identify the owners of companies, leaving our financial system vulnerable to dirty money.

Recently, one of our New York Secret Service agent members began a routine check forgery investigation into a stolen check being deposited into a bank account. The agent examined the available bank information and found that the account was for a Florida business with a single owner, no business plan filed, and no apparent product or service. Further investigation utilizing court orders and subpoenas revealed multinational wires and transfers involving millions of dollars passing through this account. The agent enlisted the assistance of the Treasury Department, and identified 80 sub-companies and accounts transferring about \$1 billion dollars between them.

This is a classic example of money laundering with ties to financial crime, narcotics trafficking and terrorism. Yet, because of the insidious protections afforded by shell corporations, only one person was arrested and the proceeds of one account was seized.

The Financial Crimes Enforcement Network, or FinCEN, is a U.S. Treasury bureau whose mission is to safeguard the financial system from illicit use, combat money laundering, and promote national security. FinCEN has found that shell companies—which are business entities without active business or significant assets—are an attractive vehicle for those seeking to launder money or conduct illicit activities, both domestically and internationally. FinCEN also believes that all these shell companies have been used domestically as vehicles for financial crimes with credit cards, purchasing fraud and fraudulent loans. In addition, FinCEN cautions that international wire transfers allow for the movement of billions of dollars by unknown owners, which can facilitate money laundering and terrorist activities.

New York Representatives Carolyn Maloney and Peter King, along with nine cosponsors, have introduced House Bill 3089, The Corporate Transparency Act of 2017. In introducing the bill, Congresswoman Maloney stated, "Anonymous and shell companies have become the preferred vehicle for money launderers, criminal organizations, and terrorist groups because they can't be traced back to their real owners and the U.S. is one of the easiest places in the world to set up anonymous shell companies." Congressman King also said: "The Act targets this problem by requiring a company that has the characteristics of a shell corporation to disclose

who benefits from the company's operations and make that information available to law enforcement." The Corporate Transparency Act of 2017 has subsequently been introduced in the Senate by Senators Wyden and Rubio. FLEOA strongly endorses this bill.

We are also supportive of the TITLE Act, introduced by you, Senator Whitehouse, and Senators Grassley and Feinstein. FLEOA strongly believes that legislation requiring companies to disclose their purpose, actual ownership, and appropriate contact information would assist law enforcement in identifying the criminal and terrorist organizations that are exploiting this weakness. Only with full transparency can we prevent the scourge of illicit funding provided by the anonymity of shell corporations.

Thank you for this opportunity to testify today and I'll be happy to answer any of your questions.

Mr. WHITEHOUSE. Thank you very much, Mr. O'Carroll.

We are very honored to have Ms. Vicini here as the deputy head of the Delegation of the European Union to the United States. We thank you for taking the trouble to join us and welcome your remarks.

CAROLINE VICINI, DEPUTY HEAD OF DELEGATION, DELEGATION OF THE EUROPEAN UNION TO THE UNITED STATES

Ms. VICINI. Thank you, Chairman Whitehouse, Senators Boozman and Shaheen, and Representative Moore.

Allow me to start this with presenting our condolences for the horrible shooting in Las Vegas. We are terribly sorry for you all, and hope that you have not family and friends that have been touched by this. And our thoughts are going to all the victims and their families.

This is my privilege to have this opportunity to present to you today. I'm here to exchange views and provide an overview of the European Union's response to money laundering, in particular in terms of transparency of beneficial ownership information.

We live in a world where terrorist groups and organized crime organizations expand the scope and complexity of their illicit activities. Their corruption exploits the freedoms and benefits offered by globalization and the huge number of financial transactions processed every day by a diverse number of financial actors. Across the globe, open-service shell companies, trusts, private foundations, and other entities serve as vehicles through which money flows. These complex structures are composed of companies with unknown owners and beneficiaries, serviced by multiple bank accounts housed in numerous banks, situated in jurisdictions with strong bank-secrecy legislation that are unlikely to cooperate with foreign authorities.

The European Union is at the forefront of global efforts to make corporate transparency effective to combat global financial crime, including corruption. Europe's response is centered around three key elements: the current EU rules in force, proposals to reinforce these rules, and international cooperation.

The current EU rules in force, the so-called Fourth Anti-Money Laundering Directive—the EU has accomplished much in terms of the traceability of financial transactions through a series of money-laundering directives. The landmark Fourth Anti-Money Laun-

dering Directive entered into force on the 26th of June this year, some 20 years after the first such directive. Banks should, of course, possess information about a customer—if it is Mr. or Mrs. Smith—before they open a bank account. However, the situation is much more difficult when the bank does not deal with the customer directly, but rather with company A or trust B. In these cases, if the bank is not able to identify who is behind a company or trust, the ability to collect relevant information such as the source of funds or the reason why the account is opened is severely compromised. The bank needs to be sure that the company or the trust is not a shell for disguising illicit activities.

That is why the Fourth Directive forces identifying the beneficial owners of a company or a trust mandatory at the start of every new business relationship. But that is not all. The directive requires this information to be recorded centrally on a register or data-retrieval system in the EU member states.

The purpose is fundamental: To allow swift and efficient access to important information by banks that will also allow them to fulfill their legal obligations, but also access by all national competent authorities that play a role in preventing money laundering and terrorism financing. This includes the Financial Intelligence Units, which are equivalent in the member states to the U.S. FinCEN. The EU member states are currently setting up their registers.

But the EU has also proposed to reinforce these rules. The EU has faced heinous terrorist attacks in recent years. While less dramatic but equally telling, there was a strong public reaction to the Panama Papers scandal. In these circumstances, the European Commission took further steps in July 2016 with a new proposal to present targeted measures to strengthen the Fourth Directive. The European Commission proposed the interconnection of these central registers of beneficial ownership information. Given the increasing number of cross-border financial transactions, authorities would be able to consult registers and access information across member states much more easily.

Public access to the beneficial ownership information for for-profit companies and trusts—corporate structures would be incentivized to provide that they're run as clean businesses. We are not talking about unfettered access to information, rather granted in a full respect to the right of privacy. Sensitive information such as family-trust structures would be excluded from public access.

And, finally, the international context. The promotion of reforms, good governance, democracy, the rule of law and human rights, and public administration reform is integral to the European Union's approach to both the Western Balkans and the east European Union's approach—and to the Eastern Partnership countries. Countering corruption and organized crime are significant elements in our approach. Considerable direct assistance is provided at the national and regional level. We have seen major reforms in Georgia and Ukraine on the back of EU support. And in the Western Balkans, as potential members of the European Union, our policy is one of fundamentals first.

But the European Union is not alone. We share responsibility with the United States, complementing each other as key players in this joint fight. We recognize the commitment of the United

States, underpinned by strong enforcement capabilities. Furthermore, the European Commission, some of the EU member states, and the United States are vocal members of the Financial Action Task Force.

Honorable members, to conclude, I would like to reiterate that the success of a policy to fight against money laundering and terrorist financing is based on complementary policies, both preventive and enforcement. Strong beneficial ownership requirements are not a panacea, but a key element if we want to address both money laundering and terrorism financing risks.

The United States and the European Union must continue to support the successes we have achieved together on the international stage, driving up the standards. We must continue to speak with the same voice to convince our partners that there is still room for improvement.

Thank you very much.

Mr. WHITEHOUSE. Thank you very much.

And our final witness, Mr. Kalman from the FACT Coalition.

GARY KALMAN, EXECUTIVE DIRECTOR, FACT COALITION

Mr. KALMAN. Senator Whitehouse, Senators Boozman, Shaheen, and Representative Moore, thank you for holding this important hearing. On behalf of the Financial Accountability and Corporate Transparency Coalition, or the FACT Coalition, I appreciate the opportunity to talk about a foundational reform in the global anticorruption movement.

The coalition is a nonpartisan alliance of more than 100 state, national, and international organizations working to combat the harmful impacts of corrupt financial practices. The coalition formed in 2011, but I joined just last year, one week after the release of the Panama Papers. It was an interesting start.

The incident exposed the direct connection between corrupt and criminal practices and the secrecy that affords kleptocrats and others a vehicle to hide the money, fund illicit activity, and move those funds around the globe with impunity. This hearing is an important opportunity to further explore the link.

Traffickers in counterfeit and other illicit goods and services hide behind secret corporate entities and make it more costly for legitimate businesses to engage in global commerce. This cost is the reason that CEOs of Dow Chemical and several other multinational corporations have written in support of transparency. In a recent letter to Congress, they wrote that “When the true owners of companies put their own names on corporate formation papers, it increases the integrity of the system and provides a higher level of confidence when managing risk, developing supply chains, and allocating capital.”

These CEOs are not alone. According to Ernst and Young’s 2016 Global Fraud Survey, 91 percent—*91 percent*—of senior executives believe it is important to know the ultimate owner of the entities with which you do business.

Despite the importance, we are not winning this battle. In a report written by former U.S. Treasury Special Agent John Casarra for our coalition, he noted that in efforts to reclaim laundered money we are currently, quote, “a decimal point away from total

failure.” His analysis is based on estimates that globally we catch only about 0.1 percent of laundered money.

While kleptocrats and other criminal enterprises have updated their tools for the 21st century by utilizing anonymous companies, we have not updated our laws to catch them. And in 2016, the Financial Action Task Force, as has been mentioned, reported that the “lack of timely access to accurate and current beneficial ownership information remains one of the fundamental gaps in the U.S. context.”

That said, there is some meaningful progress being made. You’ve just heard that there’s progress in the European Union. In the Ukraine, a nation compromised by secrecy and kleptocracy, a new generation of public officials has identified incorporation transparency as a critical first step in lifting the veil of secrecy. The country has begun collecting beneficial ownership information and posting it online.

Here in the U.S., bills have been introduced in this Congress. And I want to thank Senators Whitehouse and Rubio, Representatives Smith and Moore for sponsoring the legislation. The TITLE Act and the Corporate Transparency Act would each directly address the problem we are discussing today. While slightly different, each bill includes critical provisions needed to identify corporate owners. The definition of beneficial owner, with its focus on natural persons, is important to prevent the shell games in which one company owns another or the naming of nominee directors in lieu of the true owners. Mossack Fonseca, the now-infamous Panamanian law firm, employed a woman who was named as the director for approximately 20,000 companies. The value in collecting this information is one of the reasons that multiple trade groups, representing large and small banks and credit unions, have indicated their support.

In a separate but related effort to combat anonymous corporations active in U.S. real estate markets, the Financial Crimes Enforcement Network, or FinCEN, recently extended and expanded an initiative known as Geographic Targeting Orders, or GTOs. The GTOs require the collection of beneficial ownership information for certain cash-financed, high-end real estate transactions. In renewing the GTOs in August, FinCEN noted—as Senator Whitehouse also said—that in 30 percent of the real estate transactions covered by the rule the purchaser was someone who had a suspicious activity report filed on them.

We are seeing progress globally, in Congress, in the administration, and in the private sector, and continued support from a wide range of anticorruption, human rights, and other organizations. We now have an opportunity to lift the veil of secrecy. We must end the use and abuse of anonymous companies.

I thank you for this opportunity and look forward to answering any questions.

Mr. WHITEHOUSE. Thank you, Mr. Kalman.

I will turn first to Senator Boozman for any questions or comments he may have.

**HON. JOHN BOOZMAN, COMMISSIONER, COMMISSION ON
SECURITY AND COOPERATION IN EUROPE**

Mr. BOOZMAN. Thank you, Senator Whitehouse. And, again, thank you so much for having this very interesting and timely hearing.

I'd like to ask you a little bit about how this works in the sense that—can you talk about a little bit—perhaps you, Mr. O'Carroll—about the specific methods that are used to launder money through anonymous shell companies and real estate? Talk to us a little bit about the specifics of how that exactly works.

Mr. O'CARROLL. Yes, Senator. I guess going back to the investigation that I spoke about in my testimony, what happens is that when an individual wants to open up a shell company, they go into a bank and they basically are just asked for some very superficial information to open up the account, which doesn't necessarily mean—you don't have explain what your business does. You don't have to show anything about the ownership of it. You don't have to show anything about the beneficiaries of it. It's really just a very simple transaction, probably with even less paperwork than opening up a savings account.

Anyway, once that happens, what will happen then is that you will start doing the sub-accounts, which is what happened in this case here. And each of the people trying to launder their money will then put money into one sub-account and then transfer it into another. And as they transfer the money back and forth, it's going internationally in many cases, and it gets pretty much washed. So by the time we start our investigation on it, we'll be able to see transactions of large amounts going back and forth, but we really don't know from who to who.

And then again, as one of my colleagues there at the table said, is that oftentimes the U.S. Government is incapable then of being able to target that account and do anything to, you know, grab the assets in it, or anything else. I think it was, like, 0.1 percent is recovered.

Mr. BOOZMAN. Right. So we have pretty strict laws about individuals going in and depositing money. And that triggers certain things, or withdrawals—cash withdrawals. So this allows, through that, to essentially counter that?

Mr. O'CARROLL. Agreed. The example is, is that if someone who's doing more than \$10,000 in a personal account, that information would be provided to the government. In this case, it isn't.

Mr. BOOZMAN. Right. We've talked about the bills that have been introduced and things. Is there anything else that we could do to help law enforcement to identify shell corporations conducting money laundering? And the rest of you all can jump in if you'd like.

Mr. O'CARROLL. I'll just take the first crack at it, if you don't mind.

Mr. BOOZMAN. Sure.

Mr. O'CARROLL. In terms of that, one of the things that we're interested in is that if the banking community would cooperate with law enforcement, it would help a lot. If somebody comes in and says that they have a pretty simplistic corporation doing, you know, whatever type of business or service it is. And let's say for months, years—whatever, small transactions are going back and

forth, very normal, looks like a normal business. But then all of a sudden, when millions of dollars start going back and forth into that account, what we'd like is for the banking community to do due diligence and either go in and ask the account holder, is this accurate? Is this part of your business? And put them at ease. Or, probably the best part, would be notify law enforcement that this account now is becoming very active. That would be one of the of the requests we'd have.

Mr. BOOZMAN. Anybody else? Are we cooperating with Interpol and Europol and those agencies to any extent with this? The international?

Mr. O'CARROLL. As an example, the Financial Crimes Network in the United States, FinCEN, does deal very closely with the European agencies and international agencies on sharing that information.

Mr. KALMAN. I would add that we've talked with a number of Treasury special agents and folks involved in trying to combat financial crimes, and one of the things we heard was when they go overseas and do trainings—our State Department will provide trainings for other law enforcement agencies in other countries—one of them said almost every time he goes, somebody in the audience will raise their hand and say: You know, we have this issue in our country, and we've been following this case, and it goes back to someplace called Delaware. Could you help us? And he said, I'm embarrassed to say that here I am preaching the virtues of anticorruption, here I am telling them that *they* need to do better, and yet we're the ones that actually have limited opportunity to help them.

Mr. BOOZMAN. Right. No, it's a good point.

Thank you, Senator Whitehouse.

Mr. WHITEHOUSE. Thank you very much, Senator.

We'll turn to Senator Shaheen, and then I want to also recognize that Representative Moore has joined us. She is one of the authors of the principal legislation. I'm delighted that she has joined us. And we will turn to her after Senator Shaheen.

HON. JEANNE SHAHEEN, COMMISSIONER, COMMISSION ON SECURITY AND COOPERATION IN EUROPE

Mrs. SHAHEEN. I think this is for Mr. Davidson and Mr. Kalman. My perception is that the public does not seem to be outraged about this. Can you speculate about why there's not more outrage about what's going on?

Mr. DAVIDSON. With pleasure. My first reflex to that is that it's hard to be outraged by what is secret. And I almost added a little section in my talk about secrecy, because this is a huge, huge problem, and it's really part of a global problem of financial secrecy and how much money or how much value in assets is held via offshore secrecy jurisdictions that we just don't know. But it's something like at least \$32 trillion, maybe as much as \$60 trillion. But of course, nobody knows. And so this whole anonymous company issue—the secrecy element makes it very, very difficult to explain it to the citizen voter.

I think if we look at what the secrecy is doing and what anonymous companies are permitting politically—and recent events in

our country have underscored some of this problem a little bit—without mentioning any names—I think if we look at, in particular, authoritarianism—and there we have lot of evidence that’s in the newspapers, that’s evident, that people see—they can see how this is corrosive politically, and that can uncork a perhaps broader understanding of the issue. Obviously the fourth estate has a huge role to play in this, and I think they’ve been playing that role increasingly.

One of the things we very much try to do in our work at Hudson’s kleptocracy initiative is feed stuff to the fourth estate, and they’ve very eager for it. And I think we’re far ahead of where we were a few years ago. And current events may help goose that. But authoritarianism, I think, is a real key. And when we look at that and what’s going on—and not just Russia, everybody’s obsessed with Russia—but if we look at China, and all sorts of surreptitious ways in which they are influencing with a sort of new kind of soft power, events here and all over the world, we’ll find that anonymity is absolutely key, because it’s how you can disguise what you’re doing.

And we find this time and time again. We’re seeing this with a lot of the websites that have been used, increasingly. There’s the Facebook business, but there are all these websites and operations that have been owned by LLCs or anonymous companies. A lot of this has started coming to light. That’s actually a big dossier, potentially, in terms of the public becoming much more attuned to this problem.

Mrs. SHAHEEN. Mr. Kalman, did you want to add anything?

Mr. KALMAN. I would agree that you can’t be outraged about what you don’t know, so that is a problem. But when you look at the opioid crisis—and we actually produced a report, or one of our coalition partners did—talking about that connection between anonymous companies and opioids, that that is an issue that outraged people. Now, they may not know that anonymous companies are facilitating the money—it’s not that the drug dealers are actually doing it because they care about drugs, it’s that they want money, and so they have to launder the money. And so these vehicles are used.

I think there’s a lot of outrage and work going on on anti-human trafficking. We just had an anti-human trafficking group, Polaris, join our coalition because law enforcement would shut down an illicit massage parlor in one part of the neighborhood, and then another one would pop up. Same owners, different location, and the cops are playing whack-a-mole. So I do think that the crimes that they facilitate are the kinds of things that actually are eliciting the outrage. They just don’t know that what’s behind it and what makes it all possible is the topic we’re talking about today.

Mrs. SHAHEEN. Thank you.

Before the scandal broke about Russian interference in our elections, I introduced legislation to beef up the Foreign Agents Registration Act, which really doesn’t have much in the way of teeth to enforce whether anything that’s being advertised in the U.S. is a requirement that people know who’s paying for that. I wonder if you have any thoughts about whether we need to increase the abil-

ity of the Department of Justice to put more teeth into that act. Anyone? Yes, Mr. Davidson.

Mr. DAVIDSON. I'd be happy to address that. We've looked at FARA a great deal, published a few things about that, and met with the lady who runs FARA. And it needs more teeth and all of that, but I think we've sort of gone beyond that. I mean, we need a very, very reinforced FARA.

And, I think, speaking of public outrage, link FARA to public outrage and where we should be. I don't see why anyone should be lobbying for a hostile foreign government. I think that that actually is an issue that a lot of people can get behind. And FARA could be more than beefed up. But we want to talk about the swamp and doing something about it, FARA and what it is supposed to control would be a good place to start.

Mrs. SHAHEEN. Well, I certainly agree with that. I would suggest that one of the challenges has been the perception that—in the public, that attacks around Russian interference in our elections are partisan, and therefore it's become a partisan issue which has prevented a strong response to address the underlying legislation. I'll just throw that out as speculation.

Thank you, Mr. Chairman.

Mr. WHITEHOUSE. Thank you. I'm going to turn to Representative Moore, but because it's directly on point to Senator Shaheen's question, could I ask Mr. Davidson to fill in how getting around FARA might be facilitated by the use of shell corporations.

Mr. DAVIDSON. Oh. [Laughter.] Well, we've got a lot of examples of that, actually. [Laughs.]

Mr. WHITEHOUSE. Would "easily" be an accurate response?

Mr. DAVIDSON. Sorry?

Mr. WHITEHOUSE. Would "easily" be correct?

Mr. DAVIDSON. Yes. Easily—[laughs]—well, yes, easily would be a correct response. I mean, the fact of the matter is if you want somebody to do some work for you without having to be registered with FARA, it's very easy to pay people via U.S. shell companies. But they don't need to be U.S. I mean, we've seen all of this evidence and a lot of publicity about certain individuals who may have been paid abroad very significant sums for actions that they've taken in the United States. But if we just look at U.S. shell companies, I mean, you can disguise basically anything by paying someone via an anonymously owned vehicle. And this would include not only political lobbying and interference but pretty much anything. That's why when I say it's a threat to our civilization as we know it, it really is.

Soon after I co-founded Global Financial Integrity in 2006, in 2008 I met with Jack Blum and Raymond Baker, the author of "Capitalism's Achilles Heel" and the co-founder of Global Financial Integrity, and Senator John Kerry. And Senator Kerry had done a lot on the subject with the Bank of Credit Commerce International scandal, helping to break that, with Jack Blum, early in his career, and all of that. And Senator Kerry, very sadly—it was just the four or five of us in the room—said: Well, yes, absolutely it is a threat to our civilization. And that was many, many years ago. And we haven't done anything about this problem, and it's gotten worse. So we really need to wake up. And, Senator Whitehouse, I commend

you for your efforts in this area, and the occasional vulgarity in your language, which I thoroughly approve of. [Laughter.]

Mr. WHITEHOUSE. [Laughs.] Thank you.
Representative Moore.

**HON. GWEN MOORE, COMMISSIONER, COMMISSION ON
SECURITY AND COOPERATION IN EUROPE**

Ms. MOORE. Thank you so much, Senator Whitehouse. I just want to thank this distinguished panel for taking the time to give us this testimony. I appreciate, Senator Whitehouse, your cosponsoring this legislation over here in the Senate. And I have been a cosponsor of Representative Maloney's legislation since she first introduced it.

Now, you would think, to listen to you all here, that this would be a slam dunk here in the United States. I have a couple of questions. First of all, I want to comment on Senator Shaheen's question: I mean, why aren't people outraged? Because people had thought we had fixed this. You know, with stuff like the Bank Secrecy Act, when people walk into a bank they know they can't bring their \$10,000 worth of cocaine sales money into the bank. And so they thought they had fixed this. They didn't know that. Human trafficking, we didn't know how that could be financed.

So you would think that with all of the research, the release of the Panama Papers, that this would be a slam dunk. I'm wondering if you all could describe to us—and then I'm going to ask you a question too, Ms. Caroline, don't feel left out here in the EU—what do you think are the barriers to getting this legislation passed here in the United States?

Mr. KALMAN. Let me start off by saying that I think we are actually making progress after all this time. I think some of the barriers are lifting. And I think some of the opponents are engaging. There are, and have been, historic concerns from the state secretary's estate over this legislation. And people have been engaging with them. And we hope that there's a pathway forward that they will no longer oppose these bills. We've made some changes to the bills to try and accommodate reasonable concerns from the business community.

Ms. MOORE. Like?

Mr. KALMAN. Years ago, when the bill was first introduced there weren't exemptions in the bill. For example, today your bills exempt publicly traded companies because they already report this information to the SEC. You exempt companies that have 20 employees, \$5 million in sales, and a brick and mortar presence because law enforcement tells us that, you know what, that's big enough that we'll find the real guy or real gal. And so those are the kinds of things that we've tried to iron out, where reasonable requests have been made. And we said, oh, actually, these bills can be implemented with those changes.

So there are still some hurdles and some questions, I know. But the business community has come on board—or, I should say, portions of the business community, not the entire business community. The Chamber of Commerce still has concerns, as you all know. But with multinational companies saying, hey, this is about supply chains, the global nature of their operations and the places

where they are running into problems is getting worse and worse. And so this kind of information is more and more valuable.

Here's a thing I will say about the banks—you probably know this better than I—but years ago they said, hey, don't make us do any anti-money laundering responsibilities, this is a law enforcement thing, we don't want to get involved. Today, if you go and talk to them—and we've talked to the clearinghouse and major banks—and they say, look, we understand we're going to have a role in these. The bad guys use our banks and we don't want them to use our banks. We just want it to be the most efficient that it can be, and so you all have discussions about that. But on this issue, they believe that this will help them do their due diligence. It will help them ferret out bad guys that are trying to use their banks to launder money. You now have a situation where large sections of the business community now support this legislation. We hope that we can make progress in this Congress.

Ms. MOORE. There was the conversation here among the panelists about the United States perhaps taking some leadership and affecting the entire financial community. I'm wondering if this legislation were passed, what would prevent our passage of these laws from driving this business into Europe and/or solidifying these crimes in Russia or China or other places? What parallel sort of legislation do we have to prevent it just from moving to some other jurisdiction?

Ms. Vicini.

Ms. VICINI. Well, thank you for the question. First of all, I want to come back to the outrage, the question of Senator Shaheen. Actually, there was a kind of an outrage in Europe after the Panama Papers. The fourth anti-money-laundering directive had just been signed in May, and then in the fall, there was a decision to amend it. So very quickly, although this was a big piece of legislation, very quickly it was realized that this could be improved.

And there were a number of issues that were discovered through the Panama Papers that this new, improved fourth directive, or the amended one, will also take into account, the new technologies that we have for financial transactions. It will strengthen and harmonize checks on financial flows from high-risk third countries. It will increase the transparency, also make it easier for investigative journalists and NGOs and other organizations that are working on this to get access to this information. And it will confer also more power to the national finance intelligence units that will also be bound together by a stronger network.

The work is continuing. And hopefully, therefore, if the U.S. is strengthening its own legislation, the money will not come to Europe. That's what we hope, that we have already in place—or putting in place right now registers, and also this directive talks about much more than the beneficial owners' registry. It's also a question of due diligence, of what sectors are covered. I mean, there's many more sectors than the pure financial organizations and banks. It's also notaries, lawyers, real-estate brokers, high-value luxury item vendors, et cetera.

It's a very wide net where people actually have to perform due diligence at quite low numbers, and repeated transactions of smaller transactions. Hopefully we are able in that sense to prevent it

from coming to Europe. And then we work, as I said before, in the Financial Action Taskforce, to try to lift up the standards in the rest of the world and keep an eye on those countries where people can hide money, or where these institutions are not functioning as they should.

Ms. MOORE. Thank you. I'm concerned about money laundering, but other activities like human trafficking, which you all have mentioned, and I am concerned about the exemptions. What would prevent me from saying that I'm an LLC, sole proprietor, have my lawyer go set up my company and still have these 50 massage parlors engaging in human trafficking? You know, if I keep my employee size down to what the exemptions are?

I don't know exactly what the number is that would be exempt, but say if you got under 20 employees you're exempt. Explain the exemptions a little bit better, and what kind of language or legislation we should craft to make sure that no matter how big or how small you are, you can't do things like human trafficking.

Mr. KALMAN. Thank you for that question. Two things I would say: When we say publicly traded companies, for example, are exempt, because they already report beneficial ownership information—or, to the extent, above 5 percent of a company's ownership, to the Securities and Exchange Commission, so you already know that. We don't need to duplicate that.

Ms. MOORE. Right.

Mr. KALMAN. The exemption that we hear from our law enforcement folks is the opposite of what you are suggesting, precisely because of the point you're getting at. In other words, it's if you are big enough, not if you're small enough. The idea is we're trying to get at the shell companies, the actual entities that are being used as passthroughs for money. But as Senator Whitehouse said, there's no productive economic activity that's being used. So the exemption is at the lower level.

Let me also say that if in fact you had a trafficking operation going on, but the beneficial ownership information is collected on the company, one of two things would happen. Either you wouldn't create the company and you'd have to find some other way to do it, or law enforcement would be able to get access to that and not just shut down the individual facility but in fact the entire operation.

The bills that you all are proposing we believe are a foundational first step. You can strengthen laws, you can share information, but unless you have this information, then the rest of those laws are going to ring hollow. This is a first step. It is not the end of the line. There's going to be more bills and legislation and proposals we're going to need to consider. But without this, we cannot make the kind of progress you're looking to make.

Ms. MOORE. OK. And Senator Whitehouse, thank you for your indulgence. I just have one more question, and this is a crazy question. I don't know whether you guys can answer it or not. But our Supreme Court has weighed in about First Amendment rights and free speech and so forth, and corporations are people and so on. And I just wonder how any legislation would square with Supreme Court findings, or won't that matter? The Chamber of Commerce,

are they objecting on the basis of corporations having rights and so on?

Mr. KALMAN. I have not seen that as an objection.

Ms. MOORE. Good.

Mr. KALMAN. I am not a lawyer, so I don't—

Ms. MOORE. Right. I don't want to offer them the excuse. [Laughter.] Thank you. I yield back.

Mr. WHITEHOUSE. Let me recognize Senator Cardin, who I'm particularly pleased is here as the ranking member of the Helsinki Commission and also as the ranking member of the Senator Committee on Foreign Relations. Thank you for being here, Ben.

**HON. BENJAMIN L. CARDIN, RANKING MEMBER, COMMISSION
ON SECURITY AND COOPERATION IN EUROPE**

Mr. CARDIN. Well, thank you, Chairman Whitehouse.

I came by for a couple purposes. First, I wanted to thank Senator Whitehouse for the inspiration of this hearing under the banner of the Helsinki Commission, because I think it's critically important. But I also want to thank him for his leadership in the United States Senate on transparency in so many different areas, and dealing with the danger of what we see here in shell companies.

Let me first share with you that a little over a year ago I was in the Situation Room with the National Security Council, and this was the theme. This was the theme concerning our national security, and the need to improve our transparency laws on corporations because we can't track what is happening. We were very concerned at that time that it was being used for many different purposes—one of which is to avoid the sanctions in the United States that are very important to our foreign policy. Another was financing corrupt activities, including trafficking, including illegal drugs, including illegal guns. Some of it we thought was being used to finance terrorism. And that was one of the main focuses that we were looking at, trying to trace money that ends up supporting terrorism. And these shell companies were operating in a way that compromised our national security.

So this is an extremely important subject. It's not easy to get a handle on what we need to do in the United States, but the weakness of our domestic laws are clearly very much in the forefront. So it should be no surprise that the World Bank has found that when it comes to corruption on a grand scale, American shell companies move more illegal money than any other country. That's a leadership that we do not want to have. So we need to act. And, Mr. Chairman, it's more complicated because many of these laws fall within the domains of our states, so that when look at how corporations are structured, the Federal Government can play a role. But in the absence of a federal role, the states are the controlling regulatory structure, and illegal entities can find the easiest state in which to operate.

So what the United States needs to do is be a leader in fighting the use of shell companies globally to hide monies that are going to terrorists and for other illegal purposes. But we can't do that unless we first get our own house in order. And that's what Senator Whitehouse has been arguing and pressing for here in the United States. I have been working on the Senate Foreign Relations Com-

mittee with my colleagues on both sides of the aisle to get an indicator on how well countries are doing in fighting corruption. To me, corruption's one of the great challenges we have on good governance globally. It's the fuel for corruption. All you have to do is look at Russia and how it uses corruption in order to finance its system and its funding of different operations around the world.

And one of those indicators is transparency, how well you know what's going on in that country. That should be one of the major ways to judge how well a country is fighting corruption by how well it promotes transparency. And although we don't have this index in place today—we do for trafficking in persons, and every country is rated, including the United States—we don't have that for corruption. There are outside groups that do corruption indexes, but we don't. I hope that we will, with this legislation passing. It's passed our committee, it just hasn't passed the Senate yet. I'm afraid the United States may not get a great grade, because we're not doing what we need to do on transparency.

From the point of view of our own self-interest, but also in the point of view of global leadership, we're behind. And we've got to do a much more effective job. And it's not going to be easy because of the jurisdictional differences here, and the fact that illegal entities always try to stay one step ahead of what we're doing. I just wanted to make those observations. If any of the panelists want to respond, I'm more than happy to let them do that.

What would you think is the most important thing for the United States to do to show leadership to the global community that we need to work together to end this type of lack of transparency in financial operations globally? What's the one thing that America needs to do? Who's the volunteer?

Mr. KALMAN. Let me just say, I would like us to see that we could pass either Mr. Whitehouse's bill or Ms. Moore's bill.

Mr. CARDIN. That was an easy answer. They were hoping you would say that.

Mr. DAVIDSON. Well, I'll take something totally different, which is that we need to get out the pillory and put it back on the village green. We can't continue to enable this system and to treat the professionals in our society who cater to all of this as respectable members of our society. And I think that's an area that could have huge leverage. And it's a deep, cultural problem that we have also, because we don't censure our fellow citizens when they engage in money laundering for kleptocrats or criminals.

Mr. CARDIN. I've heard that a long time, that corruption has a cultural background. You can't accept that. You can't accept that. Lack of transparency, there is no justification for that. And there's no justification for corruption. You can't say, well, that's how we do business.

Mr. DAVIDSON. Indeed.

Mr. CARDIN. Yes, sir.

Mr. O'CARROLL. Just to follow up on that thought process there of transparency, probably the biggest issue with law enforcement is just follow the money. And that's the whole reason for this thing, is to shade the area so that we can't do that. I think if we do pass these bills and get some transparency, that's the way we can start

enforcing it and start making examples of the people that are abusing our system.

Mr. DAVIDSON. May I just add one thing to that, Senator?

Mr. CARDIN. Sure.

Mr. DAVIDSON. I was going to put this in my brief talk initially, but I think that passing this bill, just like the Magnitsky Act—that had a cultural affect also, because it was saying to everyone: This is not OK. We pass the abolishing of anonymous companies, it's going to have ancillary effects, or what economists like to call externalities, because no longer will it be possible to say well, look, this is perfectly OK and the U.S. law allows it. And then one can go on to the next step.

Mr. CARDIN. I agree. And just as a sidebar on this, Congress passed the transparency in extractive industries provision.¹ And we showed international leadership. Other countries followed. They enacted the law. And then this Congress repealed the rule, so the United States fell behind. Yes.

Ms. VICINI. Well, Senator, it's not my place really to give any advice to the United States Congress—

Mr. CARDIN. We advise other countries all the time. [Laughter.]

Ms. VICINI. [Laughs.] But in our view, maybe what is what is good is to try to act preventively. And that's what the EU is trying to do with this register of beneficiary owners, for example. To try to prevent these companies from being shaped, or these companies from making any business because if they are not in the register they will not be able to make any business. We haven't seen if it works yet, because the directive has just been transposed into national legislation. We have 28 nations, as you know, so it takes a little while. The machinery grinds slowly.

But as an example, as we say in the EU, from the country that I know best, is it's a country of 9 million people. And they have estimated that 800,000 economic entities will be registered there, in this register, just to give you a feeling that there are not many that will be able to escape, because you have cooperatives for buildings, you have a number of economic entities that will fall under this register.

Mr. CARDIN. Let me just conclude by also thanking Congresswoman Moore. We've been together for a long time on the Helsinki Commission and I thank you very much for your leadership on this issue. It's also great to have Senator Shaheen here as well; she has been a great member of this Commission, and also a member of the Senator Foreign Relations Committee.

This has our attention. It's time for us to act.

Thank you all very much.

Mr. WHITEHOUSE. Thank you very much, Senator Cardin.

Let me start by asking Ms. Vicini, have you seen any effects—I know that the amendments to the fourth directive only went into effect in June, so it may not be that you've seen any observed consequences, either out of your law enforcement community or anywhere else. Are people actually closing accounts and fleeing elsewhere once they have to disclose? Is law enforcement finding new

¹ See Section 1504 of the Dodd-Frank Act.

tools that they didn't have? What have been the consequences of the directive, if you can describe any?

Ms. VICINI. No, as you point out yourself, Senator, it's quite early to see if there are any effects from this particular directive. I find, though, that the due diligence that so many of the not only financial institutions have to do but also many other areas of the economy, there it has started earlier. Banks and others have started to take it on, and it's become widespread. So we see in the network of the financial intelligence unit—the FIU.net, they have the secure network where they exchange information on suspicious transaction reports. And there is an enormous amount of reports coming in there.

That poses then another problem, how do you handle all these reports, and how much can you follow up? So that you have law enforcement issue at the other end. But certainly this has put the light on this area. I think there is no economic operator today who is not aware of this, and particularly those who are advising people, tax consultants and lawyers and notaries and banks and those who service companies for trusts, et cetera. They are very vigilant. And we see that they do their due diligence and sort of bring this information into the system.

Mr. WHITEHOUSE. Mr. Davidson, could I ask you to speak a little bit more about what you touched on in your testimony, I think in a very eloquent way, which is the damage that America's role in supporting this kleptocratic effort—the damage that that does to our standing and to our reputation? You described the frustration of the Ukrainian official who was being lectured at about good governance and honesty at the same time that it was Western banks, Western lawyers who were facilitating the thievery and the looting of that country by allowing those individuals to cash their assets overseas. Both in terms of enabling foreign corruption, very often enabling great wealth and power to people who are our enemies, and in terms of hypocrisy to our reputation, how does this play into America's soft power around the world?

Mr. DAVIDSON. Well, obviously it's not good for our soft power. And I think what we see, and what I tried to show with the Ukrainian examples—and I see a lot of young Ukrainians—and they are very, very distraught about all of this. I think what we need to be concerned about is that this really spreads, that this duplicity becomes a commonplace perception, at which point we are no longer perceived as a place with good governance and something to aspire to. And therefore, authoritarianism becomes much more attractive to people in the other countries.

Now, when I started the kleptocracy initiative at Hudson three and a half years ago, the front was definitely not on our shores. But the front had an ocean between the offices of Hudson Institute and what we were trying to oppose. And then the front moved across the street, basically. So I think a very—

Mr. WHITEHOUSE. Thanks to the actions of the European Union and the United Kingdom in cleaning up their own transparency issues, so that it jumped them to come to the United States.

Mr. DAVIDSON. Yes, well, that's part of it, actually. I mean, I was at a yearly conference called Offshore Alert where the cops the robbers all congregate. But a Swiss lawyer—I don't know if he was

Swiss—but a guy with five addresses on his card from all over the world got up and was very upset about the fact that business was leaving Switzerland and coming to the United States. And this wasn't good for his particular business in question. But it's ironic that we have become the leading haven at a time when, in all sorts of other ways, we've been trying to push back against this rise of authoritarianism.

I mean, America's soft power is in so much trouble right now that I think we need to focus on this really as a national security threat. It's not about soft, soft power. We need new words for these things, because they aren't the same as they were 10 or 20 years ago. If we look at China, for instance, and what they're doing, or Russia, this isn't soft power. It's something else. And we're not very effective at resisting it.

Mr. WHITEHOUSE. Moving over to harder power, let's say, if we are enabling kleptocracy and corruption by providing safe haven and refuge for the proceeds of kleptocracy and corruption, what is the relationship between, let's say, in a given country on another continent, a high level of kleptocracy and corruption and security and stability in that country? Is there an established correlation of any kind?

Mr. DAVIDSON. Well, right now the correlation might be that the kleptocratic, authoritarian government, since it doesn't have to deal with any accountability vis-à-vis the people, it can have much more concentrated wealth, not only for itself but to build up the military. And we see this happening in, say, Russia, where there's less and less revenue. Oil prices are down. The sanctions do a lot more damage than some people might think. I mean, why are they so upset about the sanctions? Why are they so upset about Magnitsky? Why do they care? And yet, they've been able to divert increasing sums to their military. The same has been true in a lot of other countries.

Mr. WHITEHOUSE. So in some cases it might actually keep the oligarchs more secure. Presumably in other cases the wholesale looting of the country creates resentments that eventually create instability. Would that also not be a scenario?

Mr. DAVIDSON. Yes, it would be nice if we had more evidence of that.

Mr. WHITEHOUSE. Last question for Mr. O'Carroll. We've been talking about this at the national and international level. When I announced this bill, I announced it in Rhode Island. And among the folks present were Steve O'Donnell, who was then the superintendent of the Rhode Island State Police, and Hugh Clements, who was then the chief of police—still is the chief of police of our capitol city, the city of Providence. And they were there not because they were concerned about these international issues.

They were concerned because they kept bumping up, in local criminal investigations, against shell corporations that were really hard for them to penetrate. So whether they were chasing assets to try to restore stolen money to people or trying to figure out who was behind a drug trafficking network, they were constantly bumping up—right in Rhode Island—against these schemes. And I'm wondering what your view is, from the Federal Law Enforcement

Officers Association, about how prevalent this is as a local problem for local police officers trying to deal with local crimes.

Mr. O'CARROLL. It's a very good question, Senator, because, as you're finding out now, we're finding it works best with our federal law enforcement in cooperation with local and state law enforcement. So we've been trying to increase our resources by partnering with the states and locals. As an example, when I was the inspector general of Social Security we worked very closely with the two gentlemen that you spoke about in Rhode Island in terms of disability fraud, because the locals know what's going on in that community. They know who the bad players are. And what we try to do by bringing in the federal law enforcement is, we've got a little bit more of the global issue on it. We've also got more resources that we can put towards it, using the FinCEN and those types of information.

Mr. WHITEHOUSE. But you see local law enforcement bumping into this problem all the time and needing your help.

Mr. O'CARROLL. Oh, absolutely. And what you're finding—and I think what we've talked about here—is that it's so insidious, in that every major crime now is somehow being tied in with the money laundering. You know, be it drugs, be it financial crimes, be it any of the other issues, all on local levels that just seem to be multiplying and getting bigger. So, yes, it's at a local level and the Federal Government's job is to help.

Mr. WHITEHOUSE. Mr. Kalman, I've called on everybody but you. Do you have anything you'd care to add that I haven't asked, or that has been provoked by the hearing? I don't want to leave you silenced here.

Mr. KALMAN. To follow up on that last point, one of the things that we want to thank you for and encourage you on your bill is that you do make the information available to local law enforcement. There's two, in our minds, critical pieces that are common in both bills that—whichever one passes—we want to make sure stands strong. One is the definition. You have a very strong definition in your bill, that you cannot use, or put in a manager or nominee, or any stand-in. That definition—

Mr. WHITEHOUSE. Kind of defeats the purpose, doesn't it?

Mr. KALMAN. Exactly. You know, garbage in, garbage out. So that is critical. And the other is access to the information. And you give access to law enforcement up and down. So international cooperation all the way down to the local level with law enforcement. And you give it to the financial institutions that we ask to help us with anti-money laundering. Those are critical, critical pieces. And we urge you, as this process moves forward, please hang tough and keep those provisions strong.

Mr. WHITEHOUSE. Yes, we will. And I appreciate it. It was significant to me. I've been the U.S. attorney and the attorney general of my state. And attorney general in a state where all the criminal jurisdiction resides in the attorney general. We don't have DAs. So I've got a really good relationship with our law enforcement community. And they were deadly serious about, look, this is not international crime. This is local crime. This is affecting our cases day in and day out right here at home. So I appreciate that.

Senator Shaheen, any closing questions or remarks?

Mrs. SHAHEEN. I have one more question that I'd like to direct to Ms. Vicini, because in your testimony you talked about the major reforms in Georgia and Ukraine that you've seen. And the western Balkans, which have been challenged with corruption issues, and that your policy is one of fundamentals first. Can you explain what you mean by fundamentals first?

Ms. VICINI. Well, for countries that aspire to become members of the European Union, we have a very thorough process of negotiation where they must, first of all, foremost adhere to what we call the Copenhagen criteria on human rights and good governance and democracy, et cetera. But then also, they have to live up to that key of the European Union, and that is the collective European Union legislation. So, to say, they must be, the day they enter, be able to meet all those criteria. And that is, of course, a big leap for many countries. What we do is, there is a process of negotiation, but there is also a process of support to try to help, to build that capacity. And it's a very thorough and sort of built-up process where we support the justice system, where we support good governance practice, in different ways. That's what I mean.

Mrs. SHAHEEN. I appreciate that, especially the support piece. I noticed a piece this week in one of the news reports about Serbia, and that the support for joining the EU has decreased in Serbia pretty significantly, as has their favorability towards the United States. And support for Russia has increased pretty dramatically. Certainly, I think that support piece is really critical as we look at trying to keep the western Balkans moving towards EU integration.

Ms. VICINI. That is, of course, the other part in the middle, is that it's a very long and difficult and laborious process. And it requires a lot from the politicians to be able to see this through. And it's easy to lose the population on the way. But, yes, Serbia, there are also other reasons.

Mrs. SHAHEEN. Thank you. Thank you, Mr. Chairman.

Mr. WHITEHOUSE. Well, let me thank all of the panel for testifying, and thank the Helsinki Commission for giving us this forum. Whether you're a cop on the beat in a local neighborhood concerned about the ability of the criminals you're going after to obscure their activity from you, or whether you are an American concerned that the reputation of our great country is being smeared by our participation in enabling the world's kleptocrats, drug dealers, thieves, and other global miscreants through our own system, one thing that we do know is that if you're coming up in a corrupt country you always have to worry.

You can steal as much as you can from everybody around you, but you've always got to worry about the bigger fish that's coming to steal everything that you stole. So at some point—why the Magnitsky Act was so infuriating to the Russians—at some point if you're going to play out your kleptocratic role, you're going to have to jump the fence and move your ill-gotten gains into a country that honors the rule of law. And that way, you can hang onto what you stole against that next big fish coming to steal it back from you. And in that way, the countries that enjoy and espouse rule of law are now inexcusably and constantly facilitating the worst of our enemies by providing them shelter and providing

them, to some degree, respectability. And we have got to put an end to it.

And the testimony was terrific today. We look forward to working with you to drive this process forward. Thank you all very much. The hearing is concluded.

[Whereupon, at 4:02 p.m., the hearing ended.]

APPENDICES

PREPARED STATEMENTS

PREPARED STATEMENT OF HON. SHELDON WHITEHOUSE

This hearing will come to order. Good afternoon and thank you all for being here. I'd like to especially thank Chairman Wicker for working with me to hold this important hearing on combatting crime and corruption through increased transparency.

From 2012 to 2015 the Azerbaijani government reportedly funneled €2.5 billion from four UK-based shell companies through an Estonian branch of a Danish bank to bribe European politicians and Azerbaijani elites, in a scheme dubbed the "Azerbaijani Laundromat." According to a report from the Organized Crime and Corruption Project, "the money bought silence" during a time when the Azerbaijani government "threw more than 90 human rights activists, opposition politicians, and journalists into prison on politically motivated charges."

The Azerbaijani Laundromat is not a unique scheme. In 2015, the "Panama Papers" exposed what many in the law enforcement and anticorruption world already knew: that corrupt officials, tax cheats, drug traffickers, terrorists, and criminals from around the world routinely use shell companies to hide assets and obscure illegal activities. America's lax incorporation laws have made the United States a favorite destination for money laundering. Make no mistake, we are a facilitator, as well as a target, in this racket.

With every passing day, we learn more about how Russia and Russian kleptocrats exploit opaque business laws to hide ill-gotten riches, bribe corrupt officials, and undermine the world economy and democratic institutions. Heather Conley at the Center for Strategic and International Studies wrote in her report, "The Kremlin Playbook," that corruption is "the lubricant" with which the Russians operate. CSIS warns that to fight the corruption that gives Russia this channel of influence, "enhancing transparency and the effectiveness of the Western democratic tools, instruments, and institutions is critical."

Russian kleptocrats, foreign drug dealers, and international tax cheats all use the same tool to launder their ill-gotten gains and evade law enforcement: the shell corporation. A shell corporation serves no economic purpose and conducts no real business. Instead, these entities exist to hold legal title to bank accounts, real estate, or other assets, hiding the true owners.

America is a haven for those doing mischief through shell corporations. In fact, starting a shell corporation in this country can be easier than getting a library card. Currently, no state requires the disclosure of beneficial owners—the real human beings who own the companies. Instead, corporate records can identify the

owner as just another shell corporation or a professional agent who was paid to sign the needed forms and never speak of them again. Or a lawyer who refuses to disclose her client, citing attorney-client privilege.

We have seen over and over how foreign governments and criminal organizations have abused our lax incorporation laws.

- The Iranian Government used a string of generic businesses to obscure its ownership of a Fifth Avenue skyscraper.
- A Mexican drug cartel used an Oklahoma corporation to launder money through a horse farm.
- A crime syndicate set up a web of corporations in eight states as part of a \$100 million Medicare fraud scheme.
- A human trafficking ring based in Moldova hid its crimes behind anonymous corporations in Kansas, Missouri, and Ohio.

Then there are the Panama Papers—over 11 million documents leaked from a Panamanian law firm. They revealed mischief conducted through shell companies, like the 2011 purchase of a \$3 million oceanfront condo in Miami by a Brazilian politician facing corruption charges. 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, found that 30 percent of the cash purchases of high-end real estate by shell companies in six major cities involved a suspicious buyer. With so many properties serving as lavish safe-deposit boxes, the housing supply tightens, raising costs for American families.

The crimes being hidden may be complex and the assets they conceal may be elaborate, but the answer to the problem of shell corporations is simple: require private corporations to report and update their beneficial ownership information. In fact, I have introduced legislation with Senators Grassley and Feinstein that does just that. Senators Rubio and Wyden have also teamed up on related legislation.

Transparency into shell corporations is not a novel idea. As we will hear from our panel, every member of the European Union has committed to ensuring such transparency. The United Kingdom has already implemented its own transparency law. The light of transparency is about to shine on criminal assets hidden in European shell companies, which means that lots of money will be looking for new, dark homes.

We cannot let America become that new dark home for corruption and crime.

In the year 1630, John Winthrop told his fellow early American settlers that, “We must always consider that we shall be as a city upon a hill—the eyes of all people are upon us.” If we become the new, dark home, I fear we will risk losing our place as that city on a hill and beacon of justice. In the global battle of ideas, chaining our reputation to international crime and corruption is a self-inflicted stain we don’t need.

I am glad we are holding this hearing today, and I look forward to hearing from our distinguished witnesses.

PREPARED STATEMENT OF CHARLES DAVIDSON

Combating Kleptocracy with Incorporation Transparency

Acting Chairman Whitehouse, Co-Chairman Smith, and Members of the Helsinki Commission, thank you for inviting me to testify today. I would also like to thank Paul Massaro, staff of the Commission, for helping to arrange this important discussion. My name is Charles Davidson and I am the Executive Director of the Hudson Institute's Kleptocracy Initiative, which researches how authoritarian regimes and globalized corruption threaten democracy, capitalism, and security.

1—Kleptocracy: The Business Model of 21st Century Authoritarianism

Today, the most dangerous threat to our national security is the aggression of authoritarian regimes that actively seek to undermine our freedom and democracy, and to export authoritarianism into the OSCE region and around the globe. And let us not be mistaken: What is at stake is the survival of our civilization.

These regimes have already upended the post World War II international order via invasion and violation of treaties, perverted a rules-based global system of relatively fair economic exchange via intellectual property theft and corrosive business practices, and attacked our government's computer systems. And these regimes are sharing best practices and increasingly behaving like an axis of evil.

The most important thing I want to bring to our attention today: It is essential to understand that these authoritarian regimes have ALL adopted the business model of 21st century authoritarianism, a model whereby those who govern, usually a very small group, family, or even individual, loot their own country, *and store the proceeds in free and democratic nations* such as ours, whose rule of law and reliable institutions serve to protect their ill-gotten gains. That business model = kleptocracy.

21st century authoritarianism cannot be dissociated from kleptocracy. They have tied the knot. Where we find one, we find the other. And the situation is serious. Authoritarian kleptocracy has been growing, while freedom and democracy has been in recession.

But the authoritarian/kleptocratic model has an obvious vulnerability. Given that kleptocratic loot is stored within our shores, we have huge leverage over this business model.

The problem is, we often don't know where they've stored their loot, due to the ease with which one can establish anonymity of ownership.

And we, the United States of America, are the easiest and safest place to establish anonymity of ownership. For a superb summary of this disgraceful situation, I recommend Kara Scannell & Vanessa Houlder's piece in the Financial Times published May 8th, 2016, "US tax havens: The new Switzerland." As a general proposition, as an overarching challenge our society faces, as a fundamental existential issue for our civilization as we know it, it should be obvious that we cannot push back and reverse the authoritarian surge while being the bankers, lawyers, yacht builders, luxury life-

style purveyors, to those who seek the destruction of freedom and democracy.

2—Kleptocracy: A Vector of Political Decay

How is kleptocracy undermining our freedom and democracy, promoting political decay?

When the kleptocrats come here, they bring along their values, which are not ours. We were naive. We thought their offspring would go to school here and become freedom and democracy lovers. That hasn't happened.

Instead, the kleptocratic life-juice of only valuing money and power has perverted our system. Kleptocratic regimes have become increasingly adept at purchasing many of the less morally vigilant members of our "elites." [In Europe this is often referred to as "schroederization."] And this pimping is often done surreptitiously, via obscure ownership structures where beneficial ownership is not known, providing among other things plausible deniability.

3—Kleptocracy: We Incentivize it

As I said in testimony last December to the House's Subcommittee on Europe, Eurasia, and Emerging Threats: "Providing a safe haven for the proceeds of corruption establishes an incentive for corrupt practices. In my view this question of incentivization has been neglected, and is key to understanding the overall political challenge faced in terms of reform."

Anonymous companies, the asset protection they provide assured by our rule of law and reliable institutions, incentivizes kleptocracy. We must take away the punch bowl.

And we must be aware of the struggles of those trying to escape a kleptocratic past, and the role played by our European allies.

Ben Judah, in "How Offshore Finance Sank Western Soft Power" that appeared in *The American Interest* May 8th 2014, quotes Daria Kaleniuk, head of Kiev's Anti-Corruption Action Centre: "What we found was that the money stolen in Ukraine was heading into British and European tax havens and hidden using shell companies inside the European Union. This was very uncomfortable to find out. What we felt is the Western elites were being hypocritical to us—preaching anti-corruption but allowing this."

Judah quotes Mustafa Nayem, one of the leaders of the Maidan revolution: "Why do they only now investigate the hidden fortunes that were stolen and hidden in Austria and in Switzerland? We told the Europeans and we told their embassies a hundred times this money was stolen and hidden in their countries. And nothing happened. Now that the regime has fallen, they suddenly—in a matter of days—can reveal the stolen money. But why did they not do this before? They are guilty—guilty of leaving us alone with these thieves. They are guilty of allowing them to plunder us."

As per my above referenced Congressional testimony, "As Western diplomats struggled to impress on Kyiv's politicians the value of the rule of law, Ukrainian elites were stashing wealth in the West. This happens across Eurasia, where authoritarian elites now treat London, New York, and other Western jurisdictions as corruption services centers."

And what of the demand for better government and democracy in such a situation? As Francis Fukuyama said introducing Senator Carl Levin at a conference organized by Global Financial Integrity in 2008: “There can be no demand for democracy if all the rich people, if all the elites in the country, can manage to protect their own private fortunes, they have no reason to work with other people to resist the government, to demand democracy, to demand accountable government. There’s no demand for less corrupt government because everybody has taken care of themselves as an individual and it delegitimizes democracy ... anything that can be done to reduce the ability of people to transfer assets and to avoid the sovereignty of the state, it seems to me, is very important.”

As we know from the difficulties of asset recovery efforts, including our Department of Justice’s Kleptocracy Asset Recovery Initiative, it is often very difficult to find assets hidden via anonymous companies.

We must stop incentivizing corrupt and kleptocratic practices.

4—Kleptocracy: Reform, or Submit to Tyranny

As described, the anonymous ownership of assets is a dirty secret behind the rise of authoritarianism.

We must Dramatically Curtail Secrecy in the Ownership of Assets:

- Abolish the Anonymous Ownership of Assets in the United States of America
- Pressure Other Jurisdictions to do The Same

PREPARED STATEMENT OF PATRICK P. O'CARROLL

Good morning Chairman Wicker, Co-Chairman Smith and members of the Commission.

I am the Executive Director of the Federal Law Enforcement Officers Association, or FLEOA, which is a not-for-profit, non-partisan, professional association which represents more than 26,000 Federal Law Enforcement officers and agents from 65 federal agencies.

FLEOA applauds your Commission's focus on incorporation transparency, the prevention of money laundering, the financing of criminal enterprises, and terrorism.

FLEOA agrees with the report of the Financial Fraud Task Force and its findings that the United States has many laudable anti-money laundering efforts—but also has serious gaps in law enforcement's ability to identify the owners of companies, leaving our financial system vulnerable to dirty money.

Recently, one of our New York Secret Service agent members began a routine check forgery investigation into a stolen check being deposited into a bank account.

The agent examined the available bank information and found that the account was for a Florida business with a single owner, NO business plan filed and NO apparent product or service.

Further investigation utilizing court orders and subpoenas revealed multi-national wires and transfers involving millions of dollars passing through this account.

The agent enlisted the assistance of the Treasury Department and identified 80 sub-companies and accounts transferring about \$1 billion dollars between them.

This is a classic example of money laundering with ties to financial crime, narcotics trafficking and terrorism. Yet because of the insidious protections afforded by shell corporations, only one person was arrested and the proceeds of one account seized.

The Financial Crimes Enforcement Network or FINCEN is a US Treasury Bureau whose mission is to safeguard the financial system from illicit use, combat money laundering, and promote national security.

FINCEN has found that shell companies—which are business entities without active business or significant assets—are an attractive vehicle for those seeking to launder money or conduct illicit activities, both domestically and internationally.

FINCEN also believes that these shell companies have been used domestically as vehicles for financial crimes with credit cards, purchasing fraud and fraudulent loans.

In addition, FINCEN cautions that international wire transfers allow for the movement of billions of dollars by unknown owners, which can facilitate money laundering and terrorist activities.

New York Representatives Carolyn Maloney and Peter King, along with 9 co-sponsors, have introduced House Bill 3089, "The Corporate Transparency Act of 2017." In introducing the bill, Congresswoman Maloney stated, "Anonymous and shell companies have become the preferred vehicle for money launderers, criminal organizations, and terrorist groups, because they can't be traced

back to their real owners and the U.S. Is one of the easiest places in the world to set up anonymous shell companies.”

Congressman King also said, “The Act targets this problem by requiring a company that has the characteristics of a shell corporation to disclose who benefits from the company’s operations and makes that information available to law enforcement.” The Corporate Transparency Act of 2017 has subsequently been introduced in the Senate by Senators Wyden and Rubio. FLEOA strongly endorses this bill. We are also supportive of the TITLE Act, introduced by Senators Whitehouse, Grassley, and Feinstein. FLEOA strongly believes that legislation requiring companies to disclose their purpose, actual ownership, and appropriate contact information would assist law enforcement in identifying the criminal and terrorist organizations that are exploiting this weakness.

Only with full transparency can we prevent the scourge of illicit funding provided by the anonymity of shell corporations.

Thank you for this opportunity to testify today and I will be happy to answer any of your questions.

PREPARED STATEMENT OF CAROLINE VICINI

ACKNOWLEDGEMENT AND INTRODUCTION

Chairman Wicker, Co-Chairman Smith, Ranking Members Cardin and Hastings, Commissioners, it is my privilege to have this opportunity to present to you today. I'm here to exchange views and to provide an overview of the European Union's response to money laundering—in particular, in terms of transparency of beneficial ownership information.

We live in a world where terrorist groups and organised crime organisations expand the scope and complexity of their illicit activities. Their corruption exploits the freedoms and benefits offered by globalisation and the huge number of financial transactions processed every day by a diverse number of financial actors.

Across the globe, open and serviced shell companies, trusts, private foundations, and other entities serve as vehicles through which money flows. These complex structures are composed of companies with unknown owners and beneficiaries, serviced by multiple bank accounts housed in numerous banks situated in banks in jurisdictions with strong bank secrecy legislation that are unlikely to cooperate with foreign authorities.

The European Union is at the forefront of global efforts to make corporate transparency effective to combat global financial crime, including corruption. We are seeing success.

Europe's response is centred around three key elements:

- I. the current EU rules in force;
- II. proposals to reinforce these rules; and
- III. international cooperation.

CURRENT EU RULES IN FORCE—THE 4TH ANTI-MONEY LAUNDERING DIRECTIVE

The EU has accomplished much in terms of the traceability of financial transactions through a series of money laundering Directives.

The landmark "Fourth Anti-Money Laundering Directive" entered into force in June this year, some 20 years after the first such directive.

Banks should, of course, possess information about a customer—Mr. or Mrs. Smith—before they open a bank account. However, this situation is much more difficult when the bank does not deal with the customer directly, rather with Company A or Trust B.

In these cases, if the bank is not able to identify who is behind a company or trust, the ability to collect relevant information such as the source of funds or the reason why the account is opened, is severely compromised. The bank needs to be sure that the company or the trust is not a shell for disguising illicit activities.

This is why the Fourth Directive foresees identifying the *beneficial owners* of a company or a trust mandatory at the start of every new business relationship.

But that is not all. The directive requires this information to be recorded centrally on a register or data retrieval system in the EU Member States.

The purpose is fundamental: to allow swift and efficient access to important information by banks—that also allows them to fulfil their legal obligations—but also access by all national competent authorities that play a role in preventing money laundering and terrorist financing. This includes Financial Intelligence Units [equivalent to the US FinCEN], for instance. The EU Member States are currently setting up their registers.

PROPOSALS TO REINFORCE THESE RULES

The EU has faced heinous terrorist attacks in recent years. While less dramatic, but equally telling, there was a strong public reaction to the “Panama papers” scandal.

In these circumstances, the European Commission took further steps in July 2016 with new proposal to present targeted measures to strengthen the Fourth directive. The European Commission proposed:

- I. the interconnection of the central registers of beneficial ownership information: Given the increasing number of cross-border financial transactions, authorities would be able to consult registers and access information across the Member States much more easily; and
- II. public access to beneficial ownership information for ‘for-profit’ companies and trusts: Corporate structures would be incentivised to prove that they run a clean business. We are not talking about unfettered access to information, rather granted in full respect of the right to privacy. Sensitive information such as family trust structures would be excluded from public access.

THE INTERNATIONAL CONTEXT

The promotion of reforms—good governance, democracy, the rule of law and human rights, and public administration reform—is integral to the European Union’s approach to both the Western Balkans and the Eastern Partnership countries. Countering corruption and organised crime are significant elements in our approach. Considerable direct assistance is provided at the national and the regional level.

We have seen major reforms in Georgia and Ukraine on the back of EU support. And in the Western Balkans—as potential members of the European Union—our policy is one of fundamentals first.

But the European Union is not alone. We share responsibility with the United States, complementing each other as key players in this joint fight. We recognise the commitment of the United States underpinned by its strong enforcement capabilities.

Furthermore, the European Commission, some EU Member States and the United States are vocal members of the Financial Action Task Force [FATF].

CONCLUSION

Honourable members, to conclude, I would like to reiterate that the success of a policy to fight against money laundering and terrorist financing is based on complementary policies, both preventative and enforcement.

Strong beneficial ownership requirements are not the panacea, but a key element if we want to address both money laundering and terrorist financing risks.

The United States and the European Union must continue to support the successes we have achieved together on the international stage, driving up standards. We must continue to speak with the same voice to convince our partners that there is still room of improvement.

PREPARED STATEMENT OF GARY KALMAN

Chairman Wicker, Co-Chairman Smith, Ranking Members Cardin and Hastings, and Commissioners of the Helsinki Commission, thank you for holding this important hearing.

On behalf of the Financial Accountability and Corporate Transparency [FACT] Coalition and our member organizations, I appreciate the opportunity to talk about a foundational reform in the global anti-corruption movement and the nexus between secrecy jurisdictions, corruption, human rights, and national security.

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations working to combat the harmful impacts of corrupt financial practices.¹

The Coalition first formed in 2011, but I came aboard just last year on April 11. I remember the date because it was roughly one week after the release of the Panama Papers. It was an interesting start.

The Panama Papers shed light on the corruption facilitated by anonymous companies. The details of how these entities were established and some of the particular individuals involved made headlines around the world. But, to me, it was the sheer magnitude of the disclosures that proved the most shocking and enlightening. Eleven million documents, 214,000 companies, 140 politicians from 50 countries—all from just one law firm in one country.²

The fallout was widespread. The revelations led to the resignation of Iceland's prime minister, and the exploits of Russian President Vladimir Putin's associates were well documented in the media.

The Panama Papers exposed the direct connection between corrupt and criminal practices and the secrecy that affords kleptocrats and others a vehicle to hide the money, fund illicit activity, and move it around the globe with impunity. This hearing is an important opportunity to further explore that link.

WHAT IS AN ANONYMOUS COMPANY?

When people create companies, they aren't required to disclose who really profits from their existence or controls their activities—the actual “beneficial owners” of the business. Instead, individuals who benefit can conceal their identity by using front people, or “nominees,” to represent the company. For instance, the real owner's attorney can file paperwork under his or her own name even though the attorney has no control or economic stake in the company. Finding nominees is not terribly difficult—there are corporations whose entire business is to file paperwork and stand in for company owners.

THE DANGERS OF ANONYMOUS COMPANIES

Anonymous companies are the vehicle of choice for kleptocrats and others who need to launder money. These individuals are then

¹ The FACT Coalition website: <https://thefactcoalition.org/>

² Independent Consortium of Investigative Journalists, <https://panamapapers.icij.org/20160403-panama-papers-global-overview.html>

able to use the funds to stay in power and engage in a host of harmful actions—including undermining emerging democratic movements, upsetting global commerce, engaging in human rights abuses, and threatening our national security.

Undermining Democratic Movements

Former soviet military officer and notorious arms dealer, Viktor Bout, created twelve anonymous U.S. companies in Delaware, Florida, and Texas. Before he was finally brought to justice, he reportedly supplied weapons to the Taliban, Liberia’s Charles Taylor, Libya’s Muammar Gaddafi, and the FARC, among others.³

Upsetting Global Commerce

Kleptocrats are often engaged in transnational crime, taking money from their own countries and hiding it in others. Researchers at Global Financial Integrity, a Coalition member, in a March 2017 report, estimated the direct financial cost of transnational crime.

“... globally the business of transnational crime is valued at an average of \$1.6 trillion to \$2.2 trillion annually. The study evaluates the overall size of criminal markets in 11 categories: the trafficking of drugs, arms, humans, human organs, and cultural property; counterfeiting, illegal wildlife crime, illegal fishing, illegal logging, illegal mining, and crude oil theft.”⁴

Recent studies have estimated the scale of money laundering to be in the range of 3 to 5 % of global GDP.⁵

Traffickers in counterfeit and other illicit goods and services hide behind secret corporate entities and make it more costly and difficult for legitimate businesses to engage in global commerce.

This cost is why several multinational corporations have written in support of bills in Congress to address the issue and provide world leadership. In a recent letter signed by the Chief Executive Officers of Allianz, The Dow Chemical Group, Kering Group, Salesforce, Unilever, and Virgin Group, they wrote:

“When the true owners of companies put their own name on corporate formation papers, it increases integrity in the system and provides a higher level of confidence when managing risk, developing supply chains and allocating capital. If ownership information is on record, we can have greater reputational and legal certainty in our dealings with third parties, protecting our ability to enforce contracts and safeguard our investments.”⁶

These CEOs are not alone. In fact, according to Ernst & Young’s Fiscal Year 2016 Global Fraud Survey, 91 percent of senior execu-

³ *Global Witness*, “The Great Rip-Off,” September 25, 2014, <https://www.globalwitness.org/documents/11789/the%20great%20rip%20off.pdf>.

⁴ Transnational Crime and the Developing World, Global Financial Integrity, 2017, <http://www.gfintegrity.org/report/transnational-crime-and-the-developing-world/>

⁵ Cassara, John A. Countering International Money Laundering. FACT Coalition, 2017, Countering International Money Laundering, thefactcoalition.org/wp-content/uploads/2017/08/Countering-International-Money-Laundering-Report-August-2017-FINAL.pdf.

⁶ Letter dated July 11, 2017, <http://bteam.org/announcements/u-s-government-action-crucial-to-fighting-corruption/>

tives believe it is important to know the ultimate owner of the entities with which you do business.⁷

Disrupting U.S. Markets

Increasingly there are stories of secret owners bidding up prices on properties and then using them as “banks” rather than homes. Not only is our real estate market a magnet for kleptocrats but the secrecy potentially fuels a loss of affordable housing in growing numbers of communities due to skyrocketing real estate prices and vastly inflated markets.

- In Manhattan, eight blocks between Lenox Hill and Central Park are nearly 40 percent unoccupied, and on the Upper East Side, more than a quarter of the properties are owned-but-vacant. Middle-income families are being priced out by those looking to hide assets.⁸
- In San Francisco, the South Beach neighborhood is one-fifth unoccupied, and, in the competitive California housing market, the rent crisis is affecting middle-income families.⁹
- A 2016 story in *The Miami Herald* about the impact of offshore money on the local housing market found that, “. . . the boom also sent home prices soaring beyond the reach of many working- and middle-class families. Locals trying to buy homes with mortgages can’t compete with foreign buyers flush with cash and willing to pay the list price or more.”¹⁰

Abusing Human Rights

Anonymous companies regularly serve as fronts for those engaged in crimes that involve human rights abuses. According to Global Witness, also a Coalition member, “A Moldovan gang used anonymous companies from Kansas, Missouri and Ohio to trick victims from overseas in a \$6 million human trafficking scheme.”¹¹

Stories like that convinced Polaris, one of the leading U.S.-based organizations fighting human trafficking, to join the call to crack down on anonymous companies. Recognizing the role of anonymous companies in trafficking and the difficulty of combatting trafficking schemes if law enforcement cannot “follow the money” to specific individuals profiting from the wrongdoing, Polaris wrote the following:

“In 2016, [we] analyzed public information to identify human trafficking occurring in businesses fronting as massage parlors in Tampa, Honolulu, Houston, San Francisco, Albany, Columbus, Oklahoma City, and Fairfax County, VA. The inability to identify beneficial ownership was a recurring challenge in every location . . . In order to ensure accountability for human trafficking, Congress must pass

⁷ Ernst & Young, “EY—Global Fraud Survey 2016,” April 18, 2016, <https://go.ey.com/2vGBTLN>.

⁸ Joseph Lawler, “Money Laundering is Shaping US Cities,” Washington Examiner, March 27, 2017, <http://washex.am/2mVy5BJ>.

⁹ Ibid.

¹⁰ Nicholas Nehamas, “How secret offshore money helps fuel Miami’s luxury real-estate boom,” *The Miami Herald*, April 3, 2016. <http://www.miamiherald.com/news/business/real-estate-news/article69248462.html>.

¹¹ *Global Witness*, “The Great Rip-Off,” September 25, 2014, <https://www.globalwitness.org/documents/11789/the%20great%20rip%20off.pdf>.

legislation that requires corporations and LLCs to disclose their beneficial owners, thereby guaranteeing that law enforcement has access to this information. Until police and prosecutors can identify the individuals operating illicit massage businesses, criminals engaged in human trafficking will continue acting with impunity across the United States.”¹²

Companies with hidden owners currently play a powerful role in fueling international crimes—posing huge costs for law enforcement and civil society.

Threatening our National Security

The threats go beyond the commercial and criminal spheres; they also threaten our national security. The stories of anonymous companies obtaining contracts with the Department of Defense are numerous and disturbing. I submit for the record a Global Witness report called *Hidden Menace*, which identifies, in unsettling detail, the role of secrecy in endangering our troops and undermining U.S. security. One example details how an Afghan company that was contracted to supply our troops was secretly owned by the Taliban, which used the profits to fund weapons to attack our soldiers. A second troubling report, authored by the U.S. Government Accountability Office, details how corporations with hidden owners are leasing office space to sensitive U.S. military and law enforcement agencies, a situation rife with risks that shouldn’t be allowed to continue.¹³

As Congress considers new economic sanctions to counter North Korean threats, the Commissioners should take note of a U.S. Department of Justice case closed earlier this year which confirmed that Iran evaded economic sanctions in part by reaping millions of dollars annually from a New York-based anonymous company with investments in Manhattan real estate.¹⁴

CURRENT LACK OF INCORPORATION TRANSPARENCY

To the extent that these examples illustrate the depth of the problem, it is important to acknowledge that we’ve often been able to pierce the veil of corporate secrecy through luck or leaks. That must not continue to be a substitute for critical information on criminal enterprises.

In a report written by former U.S. Treasury Special Agent John Casarra for the FACT Coalition, he noted that in efforts to reclaim laundered money, we are currently “a decimal point away from total failure.”¹⁵ His analysis is based on estimates that globally we catch only about 0.1 percent of laundered money. While kleptocrats

¹² Fact sheet, Polaris, 2017 <https://thefactcoalition.org/wp-content/uploads/2017/08/Polaris-Anonymous-Companies-Fact-Sheet-10-17-2016-FINAL.pdf>

¹³ U.S. Government Accountability Office. Federal Real Property: GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners GAO-17-195: Published: Jan 3, 2017. Publicly Released: Jan 30, 2017. <http://www.gao.gov/assets/690/681883.pdf>

¹⁴ Press Release, U.S. Attorney’s Office, Southern District of New York, 2017, <https://www.justice.gov/usao-sdny/pr/acting-manhattan-us-attorney-announces-historic-jury-verdict-finding-forfeiture-midtown>

¹⁵ John Cassara, “Countering International Money Laundering,” *The FACT Coalition*, August 2017, https://thefactcoalition.org/countering-international-money-laundering?utm_medium=policy-analysis/reports

and other criminal enterprises have updated their tools for the 21st century by utilizing anonymous companies, we have not updated our laws to catch them.

In its 2016 mutual evaluation, the Financial Action Task Force [FATF] found that the U.S. anti-money laundering framework has “significant regulatory gaps” and that the “lack of timely access to accurate and current beneficial ownership information [BO] remains one of the fundamental gaps in the U.S. context.”¹⁶

A 2014 report, by academics from the University of Texas-Austin, Brigham Young University, and Griffiths University, found that the United States is the easiest place in the world to establish an anonymous company.¹⁷

PROGRESS ON INCORPORATION TRANSPARENCY

There is some meaningful progress being made to end the abuse of anonymous companies. As you have heard, there is progress in the European Union.

In the Ukraine, a nation whose democracy has been compromised by kleptocracy, a generation of corrupt leadership has utilized anonymous companies to hide money and undermine economic and social progress. A new generation of public officials has identified incorporation transparency as a critical first step for lifting the veil of secrecy. The country has begun collecting beneficial ownership information and posting it online. The old guard is pushing back, but there is some hope today in a country that has been something of a poster child for corruption fueled by secrecy for decades.

The global trend is toward transparency.

Here in the United States, multiple bills have been introduced in this Congress to clamp down on corporate secrecy. I want to thank members of this Commission who have sponsored that legislation, including Senators Whitehouse and Rubio and Representatives Smith and Moore. The True Incorporation Transparency for Law Enforcement Act, or TITLE Act, S. 1454, and the Corporate Transparency Act of 2017, S. 1717 and H.R. 3068, would each directly address the problem we are discussing today.

The bills use different mechanisms to collect information, but each includes the critical provisions needed to identify corporate owners and provide access to that information to all law enforcement and financial institutions engaged in anti-money laundering activities. All of the bills define a beneficial owner as “a natural person who, directly or indirectly exercises substantial control over a corporation or limited liability company or has a substantial interest in or receives substantial economic benefits from the assets of a corporation or limited liability company.”

That definition, with its focus on natural persons, is important to prevent the shell games in which one company owns another which, in turn, owns another and so on—all to obfuscate the name of the individuals who exercise ultimate control. The bills would also prevent naming managers or nominee directors in lieu of the

¹⁶ Mutual Evaluation Report, Financial Action Task Force, 2016, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf>

¹⁷ Findley, Michael et al. “Global Shell Games: Experiments in Transnational Relations, Crime, and Terrorism.” *Cambridge University Press* [March 24, 2014], Page 74. <http://bit.ly/2uTLptQ>.

true owners. Mossack Fonseca, the now infamous Panamanian law firm, employed a woman who was named as the director for approximately 20,000 companies.¹⁸ And on YouTube, a video shows a journalist establishing a company in Delaware for her cat, Suki.¹⁹ While Delaware has become notorious as a U.S. secrecy jurisdiction, it should be noted that not one of our states currently collects beneficial ownership information.

The value in collecting this information is one of the reasons that those asked to assist in U.S. anti-money laundering efforts are calling for legislation. The Clearing House, which represents the largest banks in the country, has sent a letter urging enactment of the legislation, stating:

“Our member institutions take their obligations under the Bank Secrecy Act, USA PATRIOT Act and other applicable Federal and state laws and regulations very seriously and are committed to combating money laundering and terrorist financing and other criminal activities. Your legislation would assist them in these efforts, as it would serve as a source of beneficial ownership information when conducting due diligence on their customers.”²⁰

In addition, the Independent Community Bankers Association, National Association of Federally-Insured Credit Unions, and Credit Union National Association have all indicated support for the legislation to require the collection of beneficial ownership information.

In a separate but related effort to combat anonymous corporations active in U.S. real estate markets, the U.S. Department of Treasury’s Financial Crime Enforcement Network [FinCEN] recently extended and expanded an initiative known as Geographic Targeting Orders [GTOs]. The GTOs require the collection of beneficial ownership information for certain cash-financed, high-end real estate transactions. The GTOs now apply to the following metropolitan areas including: Bexar County, Texas; Miami-Dade, Broward, and Palm Beach Counties in Florida; Brooklyn, Queens, Staten Island, Manhattan, and the Bronx in New York City; the counties of San Diego, Los Angeles, San Francisco, San Mateo, and Santa Clara in California; and the latest addition, the city and county of Honolulu, Hawaii.²¹

In renewing the GTOs in August, FinCEN noted that, in 30 percent of the real estate transactions covered by the rule, the purchaser was someone who had a suspicious activity report filed on them. Prior to the GTOs, we would have had no idea who was behind the purchases.

The early results of the GTOs suggest that the collection of beneficial ownership information is a necessary reform that opens the

¹⁸ “Dirty Little Secrets.” Dirty Little Secrets, Fusion, fusion.net/story/292198/dirty-little-secrets-panama-papers-documentary/.

¹⁹ Video: Watch how easy it is to start an anonymous shell company for your cat, Fusion TV, 2016, <http://fusion.net/story/287187/delaware-cats-shell-company/>

²⁰ Letter dated August 3, 2017, <https://thefactcoalition.org/wp-content/uploads/2017/08/TCH-BAFT-IIB-IIF-2017-Support-Letter-HR3089.pdf>

²¹ “FinCEN Targets Shell Companies Purchasing Luxury Properties in Seven Major Metropolitan Areas.” 22 Aug. 2017, www.fincen.gov/news/news-releases/fincen-targets-shell-companies-purchasing-luxury-properties-seven-major.

door to additional changes to crackdown on kleptocrats and others engaged in illicit financing.

We are seeing progress globally, in congress, in the administration, in the private sector, and continued support from a wide range of anti-corruption, human rights, and other organizations.

CONCLUSION

Kleptocrats and other criminals use anonymous shell companies to hide the money they steal and maintain the power they hold. The total amounts of money are impossible to know but what we can estimate runs into the trillions. The harm caused is widespread—impacting national security, human rights, and economic and political stability.

There are many reforms we need to make, such as better coordination and information sharing among law enforcement agencies, among others. Congress recently took a critically important step when they adopted the Global Magnitsky Act to more effectively target individuals engaged in human rights abuses and grand corruption. But we must lift the veil of secrecy. We must end the use and abuse of anonymous companies. If we are unable to identify the true owners of the front companies used to launder money, it will undermine our ability to identify those responsible for the underlying crimes and our ability to enforce any additional laws we adopt or strengthen.



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