

DEZENSKI: Good morning everyone, and welcome. It's Tuesday, March 12th. I'm Elaine Dezenski, the Senior Director and Head of the Center on Economic and Financial Power here at the Foundation for Defense of Democracies. We're pleased to have everyone today, some in person, some tuning in live for our panel discussion, "Expanding the Anti-Corruption Toolkit: FEPA and Beyond."

FEPA, or the Foreign Extortion Prevention Act, is arguably the most important legislation in anticorruption in about 50 years. Today, we'll talk about what it is and how it can be leveraged against corrupt regimes, and what comes next in the fight against global corruption and kleptocracy.

I'm pleased to be joined by Rhode Island Democratic Senator Sheldon Whitehouse and Scott Greytak, director of advocacy at Transparency International-U.S.

Before I hand it over to Scott to introduce the senator and set the stage for today's discussion, just a few words on FDD. For over 20 years, we've operated as an independent, nonpartisan research institute exclusively focused on national security and foreign policy. As a point of pride and principle, we do not accept foreign government funding. The Center on Economic and Financial Power was launched in 2014, formalizing our work in countering terror finance and the institution's expertise in sanctions and economic warfare. Our work has expanded to a much broader range of research and policy to protect and strengthen America's economic and financial power. For more on our work, please visit our website, FDD.org or follow us on X, @FDD.

With that, Scott, over to you.

GREYTAK: Thanks, Elaine, for opening up today's conversation. Thank you, Senator Whitehouse, for taking some time out of your no doubt very busy schedule.

I'm Scott Greytak. I'm the director of advocacy for Transparency International-U.S. We're a part of the oldest and largest anticorruption organization in the world.

For those who may not know, Senator Whitehouse has served Rhode Island in the United States Senate since 2007. He's currently the chairman of the Senate Budget Committee and the Caucus on International Narcotics Control, and he serves as a senior member of the Judiciary, Environment of Public Works, and Finance Committees.

Senator Whitehouse has earned the reputation for being not only a fierce advocate for progressive values, but also being a thoughtful legislator who's able to work across the aisle to actually get things done. And particularly relevant for today's conversation, he's been at the center of so many efforts to fight transnational corruption and corruption here at home, including just a couple months ago, the successful launch of the United States' first beneficial ownership registry.

Most relevant to today, he was the lead author and the legislative engine in the Senate behind the Foreign Extortion Prevention Act, as Elaine said, probably the most important anti-foreign bribery law in the last 50 years.

Senator, thank you for your truly fearless leadership on these issues and for taking time out this morning. If you would, maybe we can kick things off if you could just set the stage on efforts to fight global corruption and kleptocracy, and how the Foreign Extortion Prevention Act plays into that.

WHITEHOUSE: Sure. First, let me give a very heartfelt shout-out to Transparency International for all of the terrific work and advocacy that went into making this happen. You are really phenomenal, so bravo and thank you.

I think the context for FEPA, at least in my mind, is that we are in the midst of what a famous author once called a 'clash of civilizations', only the boundary is a little bit different than that author proposed. The boundary, in my view, is between nations that are governed by rule of law and nations are governed by kleptocracy, autocracy, and criminality. And if you look at a lot of the really awful things that have happened recently, they almost inevitably emerge from nations that have been governed by kleptocracy, autocracy, and criminality.

So trying to win that clash, trying to win that battle is very important. That's why the Corporate Transparency Act is important, because to the extent that our rule of law is being abused by foreign autocrats, criminals, and kleptocrats to hide their ill-gotten gains, we need to put a stop to that. We are giving aid and comfort to our enemies when we provide that kind of shelter and relief.

FEPA's a little bit more forward-leaning. It can be used in a country where kleptocracy is the rule, and bribery is the means of doing business to go much more on offense. It allows a foreign official who demands a bribe from a U.S. person, corporate or human, to be charged with a criminal offense, or if they come to U.S. soil and make that ask, they can be charged with a criminal offense. So, it brings the power of U.S. law enforcement to bear on these illicit transactions, and that is a way of pushing back on kleptocracy, autocracy, and criminality in the actual venue where it holds sway.

GREYTAK: Elaine?

DEZENSKI: Yeah, I'm going to jump in on this idea of the level playing field. I know there was quite a bit of support for this law coming from the business community, which is interesting and important. How do you see FEPA as a real tool in terms of leveling the playing field in how it can promote and help clean business?

WHITEHOUSE: Well, if you're making, let's say, purchasing decisions on the basis that you should, for instance, the quality of the product and the price of the product, I tend to believe, and the American business community tends to believe, that we will do quite well. If you have to have that intermediating factor of having paid the minister, that changes the whole equation and that makes having the better product at the better price no longer as relevant to the transaction.

So getting that intermediate interference out of the way of markets working the way they should, contracts working the way they should, procurement working the way it should is a pretty big plus for, I guess, everybody except the crooked minister.

DEZENSKI: You also talked about, you know, this legislation as being kind of a shot across the bow to counter kleptocrats, corrupt regimes. Maybe you can talk a little bit more about what it means in today's geopolitical competition as we see this increasing authoritarian influence and corruption as a strategic tool used by authoritarians and used by kleptocrats.

WHITEHOUSE: Corruption is a dangerously viral thing. Once you start down that path, then it becomes, first of all, essential to you because it's how you're making you're living. So the folks who are involved in corruption are almost inevitably more dedicated to protecting the corrupt scheme that they inhabit than people who want to kind of come in and be nice people cleaning it up are, unless it's like a local insurgency of some kind trying to get their country back and they can be very, very, very, very determined.

But for the outer world, OK, there's some corruption in that country. Go on, on we go. This puts another very, I think, important weapon in the hands of those who would fight back against that corruption. Recognizing that wherever you hit the corruption in a foreign government, it is a part of a larger network of corruption. We're no longer talking about the, you know, a cop who needs 5 bucks to let you go at the checkpoint. We're no longer talking about a rouge minister who is seeking, you know, to get his children's tuition paid in France or wherever.

We're now talking about entire governments whose core operating principal is to extract money through corrupt means for the benefit ultimately of the maximum leader but along the way of all the participants in the scheme. And once it's gone sort of viral throughout the government like that, then being able to pick back at it is really important.

And, you know, I spent a lot of years as a prosecutor, and there's nothing you like more than having somebody you've got in the crosshairs of law enforcement so that you can encourage them to flip and tell you more about what's been going on and then kind of work a case back.

So, for a lot of reasons, this is a very healthy addition to our portfolio of legal options to push back against that other side in the clash of civilizations.

GREYTAK: So I wonder, this year we'll be celebrating the 25th anniversary of the OECD [Organization for Economic Cooperation and Development] Anti-Bribery Convention, and the United States was the first country in the world to criminalize what they call the supply side of corruption, making it illegal under the FCPA [Foreign Corrupt Practices Act] for a U.S. company or citizen to offer to give a bribe.

WHITEHOUSE: Yes.

GREYTAK: This law, there are other countries that have laws criminalizing the demand side of bribery on the books, but they've never been enforced. And I'm curious how you think about the fact of even if a country may think and its leadership may think that they will never be extradited, indicted, brought to justice in the United States, whether these kind of laws can have disincentivizing effects for corruption?

WHITEHOUSE: Yes. I think they can. I mean, the people who do best through corruption tend to want to take vacations in fancy rule of law places. They tend to want to send their kids to college in fancy rule of law places. They tend to want to have a getaway, a hideout some place so that when things go bad and some bigger corrupter fish comes along to ruin their lives in their corrupt country, they've got a place they can scoot to where they've got fancy art on the walls, fancy carpets on the floor, dark money accounts that they can pay for themselves with.

So they have a very powerful interest in having a significant behind rule of law footprint. And it's that that is imperiled by all of this because when they go try to visit the kids at Polytechnic, boom, then we can execute on the warrant.

So I think it does have a powerful effect on the individual who is now vulnerable to that kind of service of process, and it just sends, I think, a more general signal as well that on our side in rule of law land, you know, we're not only not amused by this, but we're going to start charging people who do it.

GREYTAK: There was an interesting op-ed saying that the Disney World now that, you know, families who bring their kids to Disney World, through these kleptocratic regimes, they may have their own wing of the prison of the jail there.

WHITEHOUSE: Exactly.

(LAUGHTER)

GREYTAK: Being able to capture folks there. Elaine, if you want to follow up.

DEZENSKI: Yes. I want to go back to this idea of FEPA is the long arm of U.S. justice. And in the context of what we see around global infrastructure development, China's Belt and Road Initiative, we've done a lot of research and writing on corruption as a core component of the Belt and Road Initiative. And as the US looks at what kind of infrastructure plays, you know, may be coming in the future, how we secure supply chains, how we address some of this, the challenges that have come from the Belt and Road Initiative, how could FEPA be leveraged in that sense?

WHITEHOUSE: I'd be probably hypothesizing since most of the circumstances are pretty local, but you're right that there has been a very strong general association between Chinese Belt and Road Initiatives and plenty of bribes paid to local officials to get those things installed. Very often, even the business proposition for the Belt and Road facility that's being installed is not particularly good for the country. They have maintenance obligations. The work is done by out-of-state companies. There is Chinese labor that comes in. There's, you know, there's an initial period of extraction by the Chinese government, then you're done. It's, so, for a lot of reasons looked at neutrally as a business proposition from the perspective of the benefit to the host country. I think a lot of them don't past muster. And then when you look at the bad behavior of a lot of the individuals around these projects once they're in, that just makes it a little bit worse.

So again, back to the original point, when purchasing is made on the basis of, you know, best price for the best product, we tend to do pretty well.

GREYTAK: I was having a conversation with our Australia chapter yesterday. They just passed an update to their foreign bribery laws, but it reminded me that by our research at TI [Transparency International], there are only two countries that actually actively and robustly enforce their supply side foreign bribery laws.

WHITEHOUSE: Yes.

GREYTAK: I wonder how we can make sure. And obviously the FCPA basically laid dormant for the first 20, 25 years it was on the books. How can we make sure this is something that DOJ, and this, and future administrations pick up and actually use now that we have it?

WHITEHOUSE: Well an important piece of this is going to be participation by the American corporate community. These are crimes. Crimes need victims. Prosecutors want victims who will cooperate with the prosecution. Unfortunately, we have a long history of American corporations doing business overseas in highly corrupt environments and finding a way to accommodate themselves to it and not press back.

So you could easily imagine an American corporation with a very lucrative contract or arrangement in a foreign country being hit up for a bribe and saying, "you know no we can't do that. We've got this Foreign Corrupt Practices Act. And you shouldn't be asking that because somebody might charge you with that. But we're your friends. We're getting the bauxite. And we're not going to bother to tell because you know we're your friends." And so the business interests of certain corporations in certain environments are not conducive to cooperating as victims and witnesses in these types of charges. So making sure that corporations respond in a more positive way to attempts to bribe their officials, and figuring out ways that law enforcement can work through that problem you know in public corruption cases.

I've set up fake entities that then approach officials who we have predicated as being corrupt to get them into a bribe relationship. So things like that that I don't think the Department of Justice has had much of a record of doing before could be developed to help get around whatever potential barrier there is from corporate comfort with the corruption in the local regime.

GREYTAK: I really want to dig into extraterritorial application and implementation but Elaine, if you want to jump in ahead of that?

DEZENSKI: Maybe just a quick follow-on question around what civil society should be doing at this stage. Now the legislation has passed we need the — we need the government to issue rules to enforce. What's the most important thing that stakeholders could do, civil society could undertake in the next year or two to really help move this forward and get that broader effect of the power of this legislation.

WHITEHOUSE: I think it's exactly that to coordinate and communicate with the corporate community doing business overseas. To make sure they understand the importance of this. To understand the significance to our country of winning this clash of civilizations. To understand the dangers of creeping autocracy and kleptocracy around the world and to put them in a better mindset when they're confronted with these kinds of demands not to acquiesce or shrink back but to actually be willing to report and go through the process of enforcement.

GREYTAK: So the number one question we get about FEPA and its future is no doubt, OK, this is on the books and the United States has this legal authority. How is this actually going to be enforced?

WHITEHOUSE: Implementation.

GREYTAK: Yes. And even just beyond the resourcing and the political will but just the practicality of being able to get a foreign corrupt official who is in another country...

WHITEHOUSE: Yes.

GREYTAK: ... diplomatic, political concerns...

WHITEHOUSE: Yes.

GREYTAK: ... physical — how to extradite them.

WHITEHOUSE: Yes.

GREYTAK: How do you see that..

WHITEHOUSE: How does it integrate with the intelligence community?

GREYTAK: ...yeah.

WHITEHOUSE: And are there times when the intelligence community is providing information that would make it practical to set up a situation where the persistent demands of a foreign official for bribes are realized in an environment where we are in fact in a position to have a witness, have a victim, make a charge, and proceed? So there's a lot to be done now that this new arena has opened up.

And pretty much every participant in this space has an ulterior motive of one kind or another so making sure that charging officials who demand bribes rises to the top of those — of that motive priority list.

And I think is going to be a pretty significant challenge. And then figuring out clever, intelligent, careful, lawful, investigative ways of using this authority even where the local American corporate community is so inured to the corruption that they won't participate as willing victims is going to be an interesting question to solve.

GREYTAK: One of the leading FCPA attorneys who I know supported FEPA, Tom Firestone, who used to be the legal adviser in Moscow for the U.S. embassy, has talked about this isn't going to be that groundbreaking, that innovative, we've used our anti-money laundering laws to go after pretty high-level political officials in other countries. That hasn't been — it hasn't been a practical barrier for us being able to enforce those other kinds of laws or our wire fraud, Travel Act violations, our drug trafficking laws. We do actually have a history of being able to go after these corrupt politicians when they violate other laws.

WHITEHOUSE: Kind of.

GREYTAK: OK.

WHITEHOUSE: I mean, yes we have done it. But do we have a investigation and prosecution of record that is commensurate with the risk to the United States, our national security, and our rule of law, fellow nations in this space where we are aiding and abetting our autocratic, kleptocratic, and criminal adversaries?

I would argue that we don't. It's one of the reasons why we have fought to plus up FinCEN's [Financial Crimes Enforcement Network] budget so it has more capacity to pursue this. It's one of the reasons why we passed the Corporate Transparency Act so that we have more information about who's behind a shell corporation.

So I think there's very considerable upside to our investigative and prosecutorial performance in these areas in which we've already been active. And I think this helps in all of those areas because when you've got you know cross ruffing statutes and you can pull cases together better, it's usually to the advantage of the prosecutor.

DEZENSKI: I think you've made a really important point which is that this whole-of-government approach to countering corruption, going after kleptocratic regimes is really the way we need to go about doing this and this this layered approach of being able to leverage the Corporate Transparency Act; FEPA, the Foreign Corrupt Practices Act, the Magnitsky laws...

WHITEHOUSE: Yes.

DEZENSKI: ... all of this is you know creating a frame that makes it more and more difficult to hide in the opacity of systems and processes and nontransparent legal frameworks.

It also sends a message that we're creating a stronger system around this — kind of the idea that we would talk about as radical transparency, which is absolutely what we need to be able to counter this broader authoritarian influence.

WHITEHOUSE: Yes.

DEZENSKI: Authoritarians hide in the opacity. So I think...

WHITEHOUSE: And they hide behind rule of law which we provide them...

DEZENSKI: ... They do.

WHITEHOUSE: ... the shelter for.

DEZENSKI: They do. They do.

We always say authoritarians are really good at laws and rules but they're not necessarily the right ones so you know it's reinforcing this idea that you know that democracy and transparency and indeed radical transparency is really what all of this is about. And extending that and working with allies and partners in democratic — other democratic countries...

WHITEHOUSE: And extending it beyond law enforcement, as well.

DEZENSKI: Yeah.

WHITEHOUSE: There ought to be trade consequences and diplomatic consequences and reputational consequences for countries that provide shelter to corrupt assets and provide the secrecy and opacity that they demand. It ought to be as unacceptable in international relations to be a provider of dark money cover as it is to provide child labor, and we haven't anywhere near gotten there yet. I think the democracy initiative of the Biden administration points in the right direction, but we're a long way from having those achievements and making clear that if you are a nation that has chosen to provide this opacity and this cover so the people who've stolen billions of dollars can hide it successfully in your country, that's going to show up in pretty much every way we touch on you, and it can't be just — we have — we wait for the corrupt official to demand a bribe, and then we go grab them, or we wait for FinCEN to have the resources to figure it out and make a money laundering case. It's got to be — I mean, I cringe when I hear the word "whole-of-government" because that, to me, using means like black hole of government. Nothing ever gets done.

(LAUGHTER)

DEZENSKI: Yeah. Yeah, that's not what we mean.

WHITEHOUSE: The only phrase I am more set off by than "whole of government" is "interagency process".

(LAUGHTER)

WHITEHOUSE: If democracy dies, it will be at the hand of interagency process, where...

DEZENSKI: That's true.

WHITEHOUSE: ... there's no accountability and you proceeded at the pace of the slowest and most reluctant bureaucracy. So when I hear "interagency process" and "whole of government", my hackles rise, that, "Uh-oh, here we are. We're scripting ourselves for failure with nobody responsible."

DEZENSKI: Yeah...

GREYTAK: Great series of tweets.

(LAUGHTER)

GREYTAK: I hope that'll perk us up. Yeah.

DEZENSKI: Well, I think we should — we should open it up to some — some questions. Does anyone want to kick us off in the — in the audience?

GREYTAK: And we have a mic floating around.

DEZENSKI: Yeah.

GANJI: Thank you.

Good morning. Thanks so much for your time. My name is Sarath Ganji. I work at a startup that deals in malign finance, and I wanted to pick up on Scott's point around...

WHITEHOUSE: You're against it, right?

GANJI: Sorry?

WHITEHOUSE: You're against it.

GANJI: I — exactly.

WHITEHOUSE: Very good. Just wanted to clear that up.

GANJI: I wanted to pick up on Scott's point around extraterritorial jurisdiction. It seems that the Supreme Court has been pretty skeptical around permitting federal statutes to be interpreted in that sort way. I'm thinking about the Kiobel decision a decade ago that put limits on the alien tort statute. I believe last year, there was a Supreme Court decision that resulted in the overturning of maybe two FCPA convictions more recently. And so even when we talk about FCPA and transnational kleptocracy, corruption, it seems pretty difficult to get federal statutes to be enforced. So I'm kind of curious how you see FEPA being interpreted in the years ahead, or just sort of how the federal bench might interpret federal tools in that area.

WHITEHOUSE: Yeah, well, I think for sure, we're on completely safe ground for bribes that are demanded on U.S. soil, and I think if you have communications with a person on U.S. soil, that there's a text that goes back and forth, or a phone call that's made. Again, there's zero concern that there's a jurisdictional issue for the United States of America. And I'm sure it'll be tested in courts, but I'm pretty comfortable that where you have a foreign corporation doing authorized business in a foreign country and a demand is made of that corporation, for that corporation to be able to defend itself in its home court is not a great stretch. We'll see how it goes, but I feel pretty confident.

GREYTAK: There's also — I had an interesting argument with a Duke law professor recently about this who knew a lot more than I did, but basically because, the UN Convention against Corruption and the OECD and other multilateral instruments are cognizant of criminalizing the demand side of foreign bribery, basically, the U.S. government can turn to that and say as a matter of international law, "Your politicians were aware that this could have been a crime." And so, it gives us an international legal justification as well, beyond our own scope of our own federal statutes.

WHITEHOUSE: I think if there is a danger here, it is of misuse of the statute to try to target particular individuals in foreign countries to try to manipulate political operations and the political structure in those countries, sort of sword, not a shield, and sword for, you know, intelligence and strategic purposes rather than law enforcement purposes. And I think if—that'd be kind of the foreign variant of being, you know, set up and entrapped in a domestic situation, and of course, they'd have all those defenses available in that circumstance, and unfortunately, probably some claim on the intelligence files of the United States to prove their case.

GREYTAK: Questions? Yeah?

BIRENBAUM: Thanks. Josh Birenbaum at FDD. If you could take off your legislative hat for a second and put on the enforcement hat from your former prosecutor days, I wonder if you could give us some sense of where you see the pipeline for these cases coming, if you see them as corollaries of FCPA cases, or if you see them as an aspect of conditionality for development aid, or whether or not we'd be reliant on regime change for an anticorruption crusader to come in, something like what we might see in Argentina. Where do you see the case coming from?

WHITEHOUSE: Yeah, I think the two scenarios that seem most likely to produce a willing victim with a crime to report are the resentful, defeated bitter in a contracting process of whom a bribe was demanded, who told the official to go pound sand, and who then lost the contract to a competitor who they believe paid the bribe, and as a result, got the contract. I think that's a bit of a motivator.

I think the other motivator would likely be when there is internal conflict in the country with transparency advocates and rule of law proponents trying to reclaim their government from the kleptocrats and the autocrats, and they get wind of things that they can bring to more public attention, and then the company, because of the publicity, has to sort of clean up its act and become a willing witness even if absent that, they'd been willing to just sort of go along with it and wait for their next chance.

GREYTAK: So that — if I could jump in, that makes me wonder. We get a lot of questions about the comparisons between FEPA and the Global Magnitsky Act. And there are a lot of good organizations that will help CSOs [Chief Security Officers], activists, journalists on the ground in other countries put together cases that evidence...

WHITEHOUSE: Yeah.

GREYTAK: ... the significant acts of corruption that then can be sent to the administration for review for potential sanctions.

WHITEHOUSE: Yeah.

GREYTAK: Do we feel that that's an effective pipeline? Do you think building a similar pipeline like that for potential FEPA violations could produce better results because it's absent political judgment, it's more based on...

WHITEHOUSE: Well, at the end of the day, you've got to add your victim who's willing to be a witness when you're bringing a criminal charge. It is very, very hard to produce a conviction in a criminal case if the victim hasn't shown up and isn't willing to testify their circumstances in which you do it, like in domestic violence cases. But they're very difficult, and you've got to rely on, you know, prior inconsistent statements made in the, you know, heat of the confrontation or the arrival of law enforcement. It's not an easy thing to do.

So as an ordinary matter, you want that victim in the courtroom willing to testify and testify truthfully and all of that, so I think that's the added factor. But as I said to the gentleman, whether that gets ginned up a bit by the pro-transparency community so that suddenly the corporation feels that, oops, maybe we should bring this case rather than be the subject of all this criticism.

DEZENSKI: I think that's a really...

WHITEHOUSE: That could provide motive for cooperation where there isn't otherwise a motive.

DEZENSKI: Yes. I think that, you know, that's an important point in terms of, you know, putting the screws on reputational risk for corporations, maybe even for public officials, foreign public officials. The threat of prosecution is certainly something that people don't want. It's like becoming politically exposed in a different way, and this is now another way we can push that exposure.

So, you know, every decision around soliciting a bribe is a question of risk on the part of the demander. What's the likelihood of that I'm going to get caught, right?

WHITEHOUSE: Yes.

DEZENSKI: What's the likelihood that this is going to turn badly for me? So being able to kind of push that risk threshold I think is really critical and probably an area where a simple society, particularly the anticorruption community, can play a bigger role in terms of getting that message out and, you know, working proactively to drive that messaging.

Another question?

LIOZ: Hi. Randy Lioz from Depolarizing Organizational Cultures. You mentioned that the counterbalance to some of the bribery is the competitiveness of companies that are wanting to do business legitimately, particularly in the US. And right now, obviously, we're in an economic kind of fight with China and they are losing ground largely because they do have so many corrupt practices. Can you speak to how this law will help us to extend that advantage and essentially up the momentum for the rule of law throughout the world?

WHITEHOUSE: If you want a global system where procurement and purchasing of goods and services is based on the quality of the product and the price that's charged for it, then you want a system that really just looks at those things. When you add back in the extraneous factor of somebody whose product isn't so great and whose price is not so great, being able to bribe a foreign official to get the jump on the more competitive rivals, then you've added a very unpleasant and improper element into the equation.

And so, I think the more we can rid ourselves of that and the more we can stand on the merits of our products and the prices for them, the better off we are. And I don't have much fear for our ability to compete successfully with China on that. Particularly, if you don't mind me throwing in a completely unrelated topic, particularly if the EU sticks to its gun on the CBAM [Carbon Border Adjustment Mechanism], the carbon border tariff, and we screw up our guts and quit shilly-shallying around and comply with the CBAM of the EU and now the UK with an internal carbon price of our own, and now the advantage that China gets from being the world's biggest global polluter gets offset and we continue to work on child labor, slave labor advantages.

You know, each one of those takes an improper element out of that equation. And I think we're moving in a really good direction actually with all of those.

MASSARO: Thank you very much, Senator. My name is Paul Massaro. I'm with the U.S. Helsinki Commission. I saw last Friday that an acting assistant attorney general was speaking and mentioned FEPA. She said that FEPA would be enforced by the same attorneys as enforced the FCPA and that they envision that sort of this would all become one bloc. Is that the right way for the Department of Justice to organize this?

I know earlier Scott mentioned that there had been efforts to hold other foreign corrupt officials accountable, but that's been through a different set of laws. So it seems like the experience to actually engage in this is somewhere else in the DOJ.

WHITEHOUSE: I would love to see a consolidated Department of Justice unit that dealt with foreign corruption across the board. I was a strong advocate for setting up KleptoCapture, which they did, and empowering it to pursue Russian oligarch assets and to be able to seize those assets and transfer them to Ukraine –then working through intermediaries and all of that.

But I think if that was — I'm not expert in how all those pieces fit precisely within the Department of Justice, but if you go back to my original point that, perhaps, if not the dominant, one of the dominant national security dangers for the United States is this clash of civilizations and that we are giving aid and comfort to our enemies in the way in which we allow kleptocrats to take advantage of rule of law systems behind shrouds of opacity. And we really need to fight back against that aggressively in the way we would in wartime against, you know, foreign spies and agents.

Then you need to have, I think, a more robust approach. And I'll lobby for one other thing. Right now if you seize a Russian oligarch's assets, they are entitled, even if they've got no real business in the United States, are not citizens, they have more rights procedurally to delay and interfere with the process of seizure than an American does who has, you know, \$40,000 bucks in cash pulled out of their trunk by a state trooper in Maryland. And it's because of the over \$500,000 rule, and that should not be the case. We need to set up a system where if you're seizing a foreign oligarch's asset or a foreign kleptocrat's asset, as long as you got the legal authority to do so, you ought to be able to proceed with what lawyers would call in rem against the asset.

And so it's the 'United States v. Yacht Marikova', or whatever the hell the name of the yacht is. And then they've got to come in and show that they've got the true beneficial owner of that yacht in the courtroom to actually assert the proper claim, and it's not the government that has to go chasing through the Cypriot shell corporation and then the, you know, Dakota Trust and then the Cayman Islands shell corporation, and try to prove up ownership before you can seize. You should flip it that way, and that puts the onus where it belongs, which is on the true beneficial owner to have to come forward.

And when they did this with botnets, what they found is that no beneficial owner came forward. You gave proper notice to the world and nobody came in because, when they came in, they'd be departing the courtroom in handcuffs.

So we've set ourselves up a very challenging procedural barrier in order to do this that is not enjoyed by ordinary American citizens in a similar situation. And that's just nuts. So that would be a very good thing to fix. And DOJ would be the beneficiary of that and enable them to — the KleptoCapture process could click through much more quickly.

DEZENSKI: So peeling back the layers of our own system...

WHITEHOUSE: Yes, not using our own system against ourselves, on behalf of a corrupt Russian oligarch, of all things.

DEZENSKI: Right.

WHITEHOUSE: Highly sympathetic...

(LAUGHTER)

... figures, those.

DEZENSKI: Do you have another question?

No? OK. Well, maybe one final question for you, Senator. Where do we go next?

I know the anti-corruption community doesn't want to stop at...

WHITEHOUSE: Yeah.

DEZENSKI: ... at FEPA. And we've got lots to do on the enforcement front, of course, and Corporate Transparency Act. But what else should we be thinking about in the next 12 to 18 months?

WHITEHOUSE: I would love to see the global anti-corruption community, obviously including our American anti-corruption community, build the conceptual, figurative city on a hill that we are looking for, so that, when we take steps forward against corruption and for transparency, we are measuring against that goal; we're measuring against that dream, against that outcome that we want to produce, rather than measuring against all the other countries that haven't done it yet and having to hear businesses say, "Oh, but you can't do that because then everybody will move to France," or, "No, you can't do that because then everybody will do this, that or the other."

And the — we get tangled up in conversations about relative competitive advantage, when what we should have is eyes on the prize; we want a world in which these things are true, and you measure against that in every conversation. And that creates an impetus forward towards that goal and provides a somewhat more robust answer to the caviling comparers that, yeah, this may be temporary, but we've all agreed to get to the city on the hill, and that's our goal. And so, yeah, you may lose competitive advantage for a couple years, but don't worry, the Brits will be along; the French will be along; the EU will be along, whatever. We'll be along.

I think we miss that in the conversation, that what we want is, in a few years, to have this be the state of play on this planet, among governments, and includes that it is just plain unacceptable to be a custodian of opaque, crooked money — a willing and knowing custodian of opaque, crooked money.

GREYTAK: There's been so much success between Corporate Transparency Act, now FEPA, making Global Magnitsky permanent, other foreign anti-corruption measures.

WHITEHOUSE: Yeah.

GREYTAK: I wonder if, playing into that theme, the idea of making sure that the United States and our professional service providers, our lawyers, our accountants, our money managers...

WHITEHOUSE: Enablers!

GREYTAK: The folks...

(LAUGHTER)

GREYTAK: ... the folks who are serving and enabling this kind of corruption, this kind of dirty money to come into the United States financial system, if that could be the next big priority for this community?

WHITEHOUSE: Yes. I think, between here and that city on a hill, going after the enablers would be a very important step. That's a bill of ours, again, so happy to push for it. And I'll give a lot of credit to Treasury Secretary Yellen and her team for the work that they have done on real estate and on investment funds. I think they've made a very, very big regulatory step forward. It's really important. And it also eases the path for legislation when the bad guys don't think, "Oh, we'll just stop the legislation, and we're going to be able to continue to engage in our nasty behavior."

If you don't mind, I'll — let me just tell you what happened when we tried to do the Corporate Transparency Act. The first thing that happened is that the United States Chamber of Commerce came in as our lead adversary. Really? They couldn't produce an argument. It was really fun to face them on stages like this because they had no argument.

What they had was members who were in the corrupt business of supporting, whether yacht brokers or art brokers or real estate brokers or investment folks, and so our United States Chamber of Commerce became the tool of the kleptocrats in that battle.

After a while, we were able to motivate their legit members against them, and they had such a backfire going in their organization that they walked away. And the instant they walked away, in comes the American Bar Association. Really? That's what you want to be standing for?

And sure enough, I had to go and face down their lawyers, who are, guess what, setting up funds, hiding accounts, being the servants, the aiders and abettors of the international kleptocrats and crooks. So we had to create the backfire in their organization, through the bankers, through the former prosecutors, through all of this. So then they shut down and went to neutral.

And then up comes the National Federation of Independent Businesses, which is supposed to represent small businesses in America. Really? That's what you want to put your effort behind? And Lindsey Graham had a shining moment when we met with the NFIB [National Federation of Independent Business] folks, and they came in to make the exact same pitch we'd heard from the Chamber, the exact same pitch we'd heard from the American Bar Association, that we'd heard over and over and over again.

And when he wants to be, Lindsey [Graham] can be a terrific cross-examiner, and those people just left in shreds...

(LAUGHTER)

... and, at the end of it, he said, "OK, Whitehouse," you know, "any questions?" I said, "I got nothing more. You did that."

(LAUGHTER)

We walked out, and in comes Senator Grassley down the hallway, like, 10 minutes late for the meeting. And he said, "What did I miss?" I said, "It's all over."

(LAUGHTER)

But that's what happens. You try to clean up this mess, and all of these American professionals, who get really big money giving aid and comfort to our enemies for fees, come roaring in through these trade associations, whose, you know, chains they've been able to yank. And we just have to be very aware of the extent to which there is an American professional cohort that is actively supporting the opacity problem because they make money off it and actively working against the national security interest of the United States in this space.

GREYTAK: Well, FDDA, TI-US, folks like Helsinki Commission on the United States, we're all strong supporters. Let's get it over the finish line this year.

WHITEHOUSE: Yes, and you've seen them in action, so thank you for your support through all of that.

GREYTAK: Yes, absolutely.

DEZENSKI: Senator, thank you so much. It's been a great conversation. Thanks for your vision. Thanks for your leadership. The fact that we can even talk about that shining city on the hill means we've made some huge progress.

WHITEHOUSE: Huge progress.

DEZENSKI: Yes.

WHITEHOUSE: Yes.

DEZENSKI: So, and thank you to everyone for joining us today.

(APPLAUSE)

WHITEHOUSE: Thank you.

END