

Speaker 1 ([00:00](#)):

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Cuneyt Akai ([00:19](#)):

Welcome to the GT ABC podcast. I'm your host, Cuneyt Akay. Here, the GT stands for Greenberg Traurig, and the ABC stands for Anti-bribery and corruption. In this episode, we're going to turn our attention to the Biden administration's recent anti-corruption initiative.

Cuneyt Akai ([00:53](#)):

I'm so very pleased to be joined by three former US attorneys to discuss this topic, and offer their insights based on their experiences, both within the government and in their experiences in private practice.

Cuneyt Akai ([01:05](#)):

In this episode, we're joined by John Pappalardo. John is a former US attorney for the District of Massachusetts. He served in that office for several years, and prior to that, spent over a decade at the Massachusetts AG's office. In private practice, he focuses on international anti-corruption and financial matters, and he is based in GT's Boston office.

Cuneyt Akai ([01:26](#)):

I'm also joined by Ben Greenberg. Ben is a former US attorney for the Southern District of Florida. He's tried more than 20 cases and has substantial experience with complex financial cases. He spent 19 years at the DOJ and has conducted FCPA prosecutions. And Ben is based in GTS Miami office.

Cuneyt Akai ([01:45](#)):

And our third guest is John Huber. John is a former US attorney for the District of Utah. He was nominated and unanimously confirmed in two Presidential administrations. He spent 27 years in public service, 19 of those years at the DOJ, and 15 of those years, working on national security matters. John is based in our Salt Lake City office.

Cuneyt Akai ([02:07](#)):

So let's get right into it. John Huber, let's start with you. If you could please give us some background and maybe a little bit of an overview of the National Security Study Memorandum recently issued by the Biden administration on the anti-corruption?

John Huber ([02:19](#)):

Well, thanks Cuneyt. It was back in June that President Biden issued this Memorandum, and in America still, when the President talks, people listen. The biggest point that he made with his Memorandum, which is different than in the past, is that he elevated public corruption or corruption to a national security level of interest. He called it a core national security interest.

John Huber ([02:43](#)):

There's always been a priority in American jurisprudence to attack corruption throughout history, but this really elevates it to a new level. To think that it's on par with terrorism and espionage, really, that helps it sink in how high of a level this is now under the Biden administration.

John Huber ([03:02](#)):

President Biden made clear statements about how important this was, and he used sound logic and reason to show that corruption is elevated to this national security level. Corruption empowers despots, it infects our own government systems, and thereby can really bring down what should be a powerful government, one of our foreign partners or neighbors, or even our own government institutions, like perhaps along the border or import control type agencies.

John Huber ([03:34](#)):

Well, what he did was he commissioned a study that will last for about six months. So this will be well into 2022 before there really is a comprehensive strategy to attack corruption as a national security interest. He will expect reports back from the key agencies involved, and if you think about national security, what agencies may be involved? Well, all of the key intelligence community agencies, that of course, the Department of Justice, Defense and Treasury, and others will be involved in this study, where they will report back to the President early next year.

John Huber ([04:12](#)):

But the Department of Justice, true to their mission, they're not waiting. When the President talks, the Department Justice, in a top-down fashion, takes action. And so the Attorney General of the United States, he established Joint Task Force Alpha, which I think in its initial run, was intended to be a focus on human trafficking and human smuggling across the Southwest border, and with those countries in Central America, to help them fight this problem.

John Huber ([04:44](#)):

Well, it appears that the Attorney General, with his enthusiasm to support the President, essentially bootstrapped one more purpose to this Joint Task Force Alpha to approach and attack corruption issues in Central America.

Cuneyt Akai ([05:03](#)):

Well, thank you, John. Over the years, as we were talking about this National Security study Memorandum, over the years, we've certainly seen a nexus between anti-corruption and what is discussed in this new initiative, and anti-money laundering.

Cuneyt Akai ([05:17](#)):

And John Pappalardo, can you please discuss this nexus and how the new anti-corruption initiative may relate to anti-money laundering efforts?

John Pappalardo ([05:27](#)):

Sure, and thank you for that. As we've seen in the past decade, there has been a worldwide focus on money laundering and anti-money laundering, that's been led by the United States, which has brought a lot of countries much closer together in this single initiative.

John Pappalardo ([05:43](#)):

It was punctuated in the US by the Anti-Money Laundering Act of 2020, which significantly changed some aspects of information gathering and enforcement. The Financial Crimes Enforcement Network, known as FinCEN, which is a part of the Treasury Department, has now been made an official player in anti-money laundering enforcement. They are charged with prioritizing the most significant money-laundering threats facing the United States. And obviously, there's a trickle down effect into other countries.

John Pappalardo ([06:23](#)):

They've listed the following priorities, both traditional and recent threats in the money laundering area. They include, as John just said, corruption, cyber crime, including recent instances of ransomware, terrorist financing, both domestic and international, transnational criminal organizations which are very traditional, as is drug trafficking and human trafficking.

John Pappalardo ([06:53](#)):

There has been an effort to focus all of the agencies and institutions on these specific threats, and this is designed to promote a coordinated data sharing framework between these agencies. And it's expected that these agencies will not only work with themselves, but also work with companies, private companies who have an institutional investment in preventing money laundering. Obviously, the private companies will still deal with essentially risk-based compliance programs, but there'll be an increased collaboration with government agencies.

John Pappalardo ([07:39](#)):

FinCEN has also been directed to set up beneficial ownership registries, which are designed to combat shell companies. And obviously, that promotes the transparency needed to prevent and detect money laundering. The Anti-Money Laundering Act has a couple of other aspects too. They've instituted a whistleblower program, rewarding those who provide information on corruption, kleptocracy and fraud, very similar to the program that's been very successful and employed by the SEC for many years.

John Pappalardo ([08:17](#)):

Lastly, the prosecutors, those in the Department of Justice has been given a new investigative tool, which is subpoena power over foreign banks, those foreign banks, all of whom maintain correspondent accounts in the United States, so that those foreign banks can now be subpoenaed directly by DOJ in the AML efforts.

Cuneyt Akai ([08:43](#)):

Thank you John, and one of the things that you mentioned that really resonates with me is this government collaboration piece that you talked about. And we've obviously seen that not only with anti-corruption measures and other laws such as anti-money laundering, but one of the things that I really noticed with the new initiative is that the initiative directs the US government to, "Work with international partners to counteract strategic corruption."

Cuneyt Akai ([09:07](#)):

And that means it also requires multiple US agencies to work together to provide recommendations. So Ben, can you discuss how the inner agency coordination actually works in practice, and what this really means for those folks that are listening to this podcast?

Ben Greenberg ([09:22](#)):

The inter-agency work and cooperation in the FCPA area really has been very tight for the last number of years, and I think that will continue and most likely increase for the reason that you said, but also because COVID has, in many ways, prevented foreign travel, has probably put a limit on some of the cases that DOJ and US law enforcement would work with foreign counterparts. And I suspect that, that will ease up and we could see an increase in cases because of it.

Ben Greenberg ([09:56](#)):

Let me talk about the inter-agency work domestically, and then pivot to the international side of it. The primary agencies for enforcing or investigating and enforcing foreign corruption FCPA cases, or the Department of Justice taking the lead from the prosecution standpoint, and the main investigative agencies on the criminal side are the FBI and Homeland Security investigations.

Ben Greenberg ([10:24](#)):

Over the past number of years, both agencies have devoted increasing resources to anti-corruption. I think some of the reason for that is, as John said at the opening, that this has really become a national security priority for the US government. And you certainly see that in places like Venezuela and other places where the US government has key foreign policy interests.

Ben Greenberg ([10:50](#)):

And so the FBI and HSI really do work closely together. Usually they're working in a task force environment, which means that you have agents embedded in the other agencies, parts of task forces with US Attorney's office, parts of task forces with the FCPA unit. And what that means is that you have agents that are really laser-focused on FCPA cases, and I think from a law enforcement point of view, that's generally the most effective way to handle these cases. They're long-term investigations. They're not one-off cases where an agent can go out and do some work and then make a case. You really have to have people that understand the statutes, that understand the priorities for their respective agencies, and are good at developing some of these financial type cases. I think that work will continue, especially because you have more prosecutors at the FCPA unit in DOJ. In the last couple of days, I think this week, they named a Permanent Chief of that unit, so I think things will get ramped up.

Ben Greenberg ([11:53](#)):

The second part that I would mention is, as you said, the way that these US law enforcement agencies work with their foreign counterparts, if you look at the countries where there have been the most robust FCPA enforcement, not all of them because I think China poses a difference. And I know John Huber is going to talk about that in a couple of minutes, but if you look at the countries in Latin America, for example, you have countries where countries are making progress with their own anti-corruption laws, which makes it a lot easier for US law enforcement to work with their foreign counterparts.

Ben Greenberg ([12:29](#)):

You have an increasing number of US agents embedded at US embassies abroad, meaning that agent law enforcement agencies [inaudible 00:12:38] agents are posted at those Embassies, and their primary goal is to work with their foreign counterparts.

Ben Greenberg ([12:45](#)):

So that is certainly going to increase, and if you look at the way a lot of these cases come to be, you have prosecutions or investigations in those domestic countries, and you have an investigation via US law enforcement looking at similar conduct, and sometimes the same conduct, and they really do work hand in glove. And so I think that will continue.

Ben Greenberg ([13:06](#)):

The final point that I want to make briefly is that there sometimes is a tendency to forget that the Securities Exchange Commission, the SEC has jurisdiction over the books and records, portions of the Foreign Corrupt Practices Act. And that's something that I think companies need to be careful of, and they of course often work very closely with the Department of Justice in those investigations.

Ben Greenberg ([13:29](#)):

And you see sometimes the penalties when there's a fine, for example, some of it going to the SEC, some going to DOJ. I think that will certainly continue. You have a new Head of the SEC who, I think in many ways will be more aggressive in this area and many areas, but I think FCPA would be one of them.

Cuneyt Akai ([13:49](#)):

Thanks Ben, and you certainly mentioned the cross-border cooperation and coordination. And we wanted to take a few minutes at this stage, really just to talk about some global anti-corruption trends we are seeing across the world. And John Huber, if you could kind of talk us through some global trends you're seeing in the anti-corruption space involving Asia?

John Huber ([14:09](#)):

Yeah, sure. So Asia has always been, or traditionally been a fertile ground for Department of Justice enforcement actions. We think of, for example, the huge scandal in Malaysia known as 1MDB, and DOJ really inserted itself in these corrupt practices where hundreds of millions, perhaps a \$1,000,000,000 was stolen from the Malaysian people. And are we're proud of our Department of Justice. They literally just wrapped this up within the last year and restored as restitution to the people in Malaysia, just a tremendous amount of money. And they used anti-money laundering US laws to help do that.

John Huber ([14:53](#)):

But when we usually think of Asia and corruption issues, fortunately, or unfortunately depending how you look at it, the People's Republic of China just comes up, and with foreign corrupt practices, it's always been a fertile ground for actions by the US Department of Justice historically. And there's no indication that they're going to let up.

John Huber ([15:15](#)):

In fact, the contrary is true, and our prediction would be that in the Biden administration, that we will see FCPA revved right back up to even a higher level to use with corrupt practices that they perceive China.

John Huber ([15:31](#)):

We know that the last several years during the Trump administration, that there was a Department of Justice emphasis on intellectual property theft, economic espionage, and corrupt business practices emanating from China that impacts US firms.

John Huber ([15:50](#)):

In fact, it's actually an overt policy of the Chinese Communist Party to take things from other countries, particularly the United States, to leapfrog so that Chinese firms can leapfrog ahead of US firms who developed through sweat and tears, these critical business practices in technology and intellectual know-how, and it stolen through corrupt practices.

John Huber ([16:21](#)):

So although that's been a priority in the past four years or so, under what DOJ called the China Initiative, it may not be branded the same, but there's really no indication that they will let up on the pressure, particularly with the conversations that I've had when I was a US Attorney with the intelligence community agencies who really perceived that this is a threat to our national security, these corrupt practices that leapfrog ahead of US firms.

John Huber ([16:50](#)):

So I would expect continued Department of Justice vigor in the area of corruption, and the People's Republic of China.

Cuneyt Akai ([17:01](#)):

Thank you, John. John Pappalardo, do you mind giving us an overview of some global anti-corruption trends you're seeing in Europe and the Middle East?

John Pappalardo ([17:10](#)):

Of course, not at all. In terms of Europe, I think it probably makes sense to break it down because Europe is fairly punctuated by two separate groups. There's the traditional Western-style European countries like the UK, France, Germany, Switzerland, where essentially, the rule of law is followed, but they can be depended upon to do the right thing for the right reason.

John Pappalardo ([17:48](#)):

All of them anti-corruption statutes. They partner very well with the United States. Many of those anti-corruption statutes, similar to the FCPA, have extra territorial jurisdiction. And there is significant coordination with the United States in anti-corruption efforts and in investigations.

John Pappalardo ([18:11](#)):

That's not to be confused by the way, with a lot of countries in Eastern Europe where they also have statutes, but the enforcement of those statutes is spotty. Countries like Ukraine or Kazakhstan and others, where they are punctuated by political instability. And quite frankly, the actual power is with a few individuals who are not officially with government. There are known as oligarchs, and in some cases with respect to those countries, they're foreign oligarchs.

John Pappalardo ([18:48](#)):

So the laws are used in those countries selectively to benefit the few and to promote the people who are already in power. While the United States is involved in anti-corruption efforts, as are other NGOs, the corruption remains a significant problem and, coordination with anti-corruption efforts, kleptocracy and things of that nature is very, very challenging.

John Pappalardo ([19:20](#)):

So they can't be depended upon to do the right thing, and it's interesting because in the first group of countries that follow the rule of law, you see coordination not only in the legal area, but in the area of sanctions. In the second group, in Eastern Europe, more often than not, they are the object of sanctions by the United States and/or its Western allies in Western Europe.

John Pappalardo ([19:53](#)):

In terms of the Middle East. It's a very, very broad area. Again, most of the countries have statutes, anti-corruption statutes, but they're placeholders. Again, selective enforcement is designed to benefit those in power, significant corruption exists in most of the countries.

John Pappalardo ([20:17](#)):

But the one bright light that does exist and inroads have been made, is in the money laundering area. Anti-money laundering provisions are mostly followed, and particularly with foreign entities and individuals. As the world becomes smaller and the trading and interaction in banking becomes smaller, anti-money laundering provisions are more the order of the day, and they can be used by the United States to enforce transparency and regular terms of business usage here.

John Pappalardo ([21:02](#)):

So that is a positive aspect, but for the most part, the legal aspects are catch-as-catch-can. It depends on the case, depends upon the individuals involved, and the entities involved.

Cuneyt Akai ([21:21](#)):

Thank you, John. Let's bring it a little closer to home right now, and we can discuss some of the anti-corruption trends that Ben, you're seeing across Latin America?

Ben Greenberg ([21:32](#)):

Sure. A couple of numbers to start with. In 2020, over 60% of the 51 FCPA and FCPA related cases involved Latin America, and I think that, that's something that we'll certainly continue over the next 12 to 18 months. A couple of trends that I think are interesting, and John Pappalardo touched on this earlier, one of those is the increasing use of money laundering statutes to prosecute international corruption cases without FCPA charges.

Ben Greenberg ([22:07](#)):

And that's something that we have seen a lot recently in Latin America. We have seen it in some of the larger countries where there has been more robust anti-corruption enforcement, both domestically in those countries, and with the US for a number of years. So we've seen that in Mexico, Colombia, and Brazil, but we're starting to see that trend in other cases. And it's interesting, another statistic, that the FCPA unit at DOJ has brought almost as many cases under other criminal statutes as they have under the FCPA. And that's primarily anti-money laundering, travel act, maybe some others.

Ben Greenberg ([22:47](#)):

And so I think that we will see that trend continue. There are a lot of reasons why the government may choose to do that. Sometimes it's easier, quite honestly, to prove a money laundering case. Sometimes the reason they do it is that an individual US Attorney's office may have more autonomy prosecuting a money laundering case than an FCPA case, and there can be reasons that the US attorney wants to do that.

Ben Greenberg ([23:14](#)):

And also, it may just be where the evidence leads, especially when there are these increased tools, as John mentioned before, where prosecutors can use the Anti-Money Laundering Act of 2020 and other tools, to go at the corruption problem. And so I think that, that will certainly increase.

Ben Greenberg ([23:33](#)):

You're also seeing increased law enforcement resources devoted to Latin America. About two years ago, there was an anti-corruption anti-kleptocracy, anti-money laundering FBI squad that was started down here in Miami to look at specifically Latin America. And that unit and the people, the lawyers, the agents, the analysts associated with them, with the unit, are going to be focused almost exclusively on Latin America, that's their task. And they're going to want to make cases in that particular area.

Ben Greenberg ([24:09](#)):

The other point that I would make about Latin America is that there is already a really good strong infrastructure in the Department Of Justice at the FBI and at HSI to work on corruption cases in Latin America. And so it's an easy... It is a target rich environment, unfortunately, and a lot of times, what the US government will do is they'll start what's literally in their backyard, and it's very developed. They have had a lot of success with these cases. And so I think that, that's likely to continue.

Ben Greenberg ([24:45](#)):

Another issue that will come up is I think there will be more enforcement in countries where there traditionally has not been as much enforcement in the past. One of the new pieces of legislation that came out as part of the budget that Congress passed was focused on an area referred to as the Northern Triangle, which includes Guatemala, El Salvador, and Honduras.

Ben Greenberg ([25:07](#)):

And there's something now known as the Engel list named for the former member of Congress that was responsible for coming up with this idea. And it's basically, a part of the legislation requires the Department of State to come up with a list of people, individuals, public officials, and private citizens who were involved in significant corruption in the past, or significant corruption that's ongoing.

Ben Greenberg ([25:35](#)):

There's not a lot out there about what criteria they use, and there's even less out there about why people are put on the list? But last month, the State Department came out with their first list as required by the legislation. And it included many, many government officials in those three countries, as well as some private citizens.

Ben Greenberg ([25:55](#)):



As of right now, the only sanction for being on that list relates to visa restrictions, and you can have your visa revoked. And so, it's primarily related to travel, but the common understanding out there is that once you're on that list, there's an increased likelihood that the US government is going to take a look at you and your business, perhaps for purposes of OFAC sanctions, perhaps other kinds of financial sanctions, asset freezes, and other things like that.

Ben Greenberg ([26:24](#)):

And so I think this is going to lead to other criminal cases, maybe SEC cases in those three countries. There's the part of this that is public shaming, that for better or worse, the US government likes to engage in. But there's the other part that once in your name is on a list like this, you are going to get more focus, and it doesn't take much from our review of the list generally. It doesn't take a whole lot to get on this Engel list.

Ben Greenberg ([26:54](#)):

The State Department's own press release and own report about it said, for example, one of the things they consider are media reports. Well, normally that's not something the US government considers when putting somebody on a kind of sanctions list. There also isn't really a mechanism to challenge while you're included on this list, and how you get off. So it's really... it's a somewhat new process, but I think that's a strong indication that there was specific bipartisan legislation focused on those three countries, that, that's where US law enforcement is going to be more focused.

Ben Greenberg ([27:29](#)):

It also happens to be that certainly with regard to Guatemala and Honduras, those are areas where in the last five, 10 years, the US government has had an increased focus in terms of narcotics trafficking and money laundering linked to narcotics trafficking. So I think those countries are going to get a lot more attention, especially because in some of those countries, there has not really been the domestic anti-corruption legislation that John talked about in Europe, for example, and in some of those countries where there is that legislation, it means a lot more on paper than it does in practice. And that's another thing that I think will grab the US attention.

Cuneyt Akai ([28:12](#)):

Well, thank you, Ben, and thank you to all of you for providing your views and insights on global anti-corruption trends. It's always fascinating to hear how different geographies are at different places in terms of global anti-corruption enforcement.

Cuneyt Akai ([28:26](#)):

My key takeaways from this discussion are one, that the National Security Study Memorandum certainly demonstrates that the Biden administration is committed to anti-corruption efforts. And it's certainly interesting to hear the initiative talk about how corruption threatens our national security, as John Huber mentioned earlier in this podcast.

Cuneyt Akai ([28:47](#)):

Second, the initiative also has implications to other relevant laws and other government enforcement areas such as money laundering, that John Pappalardo talked about during this podcast. Third, the anti-

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corruption enforcement globally, really is an inter-agency endeavor. And as Ben Greenberg talked about, FCPA enforcement has increasingly involved inter-agency in cross-border cooperation.

Cuneyt Akai ([29:11](#)):

And finally, for those of you that are listening and thinking about what you can do from an anti-corruption compliance perspective, as we're discussing these different enforcement trends across the globe, and certainly seeing that different geographic locations create different risks and have unique risk profiles to conducting business in various global locations, it's always helpful to think about where you may be operating, and what types of enforcement trends, and what types of local laws, and local customs, and local enforcement, may end up informing how your company operates in those various locations.

Cuneyt Akai ([29:44](#)):

I want to thank my three guests, John Huber, John Pappalardo and Ben Greenberg for joining us in this episode of the GT ABC podcast, and thank you all for tuning in.