Public Integrity and Coal: Introduction and Overview

David R. Eichenthal
PFM
NYU Center for Research in Crime and Justice
January 12, 2012
Overview

• Why Integrity Matters
• The Playing Field
• Challenges
• Practice
Public Integrity: Why It Matters

• “Greed is Good” => “Follow the Money”
• Context of finance, Public Integrity should matter to:
  – Ratepayers
  – Bondholders
  – Regulators
  – Elected officials
  – Public
• Non-Responsibility, Unclean Hands and Witness Impeachment
• Risk and Trust
Public Integrity: Why It Matters

• Politics by Other Means
  – Ginsberg & Shefter: Revelation, Investigation and Prosecution
  – “whether or not the GOP was ultimately able to destroy Clinton through a tactic of RIP, a sustained political attack left the administration unable to focus on policy issues.”
  – 1990s investigation of sexual harassment in the military by Democrats = a process to “stigmatize and delegitimize an institution that has become an important Republican bastion.”
Public Integrity: Why It Matters

• “[T]he point of manufacturing a Solyndra investigation in the first place — is to embarrass the president. That’s how Washington works...the party out of power gins up phony scandals aimed at hurting the party in power.”

• The Case of Mayor Adrian Fenty
  – Elected in 2006, winning every precinct
  – Washington Post Poll:
    • 67% “brought necessary change”
    • 64% “accomplished a great deal”
    • 59% “moving in the right direction”
    • 39% - 46% “honest and trustworthy”
Public Integrity: The Playing Field

• Federal, State and Local Agencies...and the Private Bar and Investigative Journalists
• Legislative Oversight – Leadership and Lone Wolf
• Auditors – GAO, Elected Auditors and Comptrollers
• Inspectors General – More Prevalent at Federal Level
• Regulators – PSC, but also SEC and FERC and others
• Civil and Criminal Enforcement – U.S. Attorneys, Attorneys General, Local Prosecutors
Public Integrity: The Playing Field

• Opportunity for Civil Action
  – Derivative actions
  – Qui Tam and Federal, State and Local False Claims Act

• Investigative Journalism
  – National and Local Reporters
  – New Media and the Blogosphere
Public Integrity: The Playing Field

• Extraordinary opportunities to develop information to promote a public integrity case: “citizens can now play a much greater role in holding institutions accountable. “

• Information and data that are on-line that would have required years of FOIL requests and research
  – SEC and other Corporate filings
  – Public meeting minutes
  – Court and property records
  – Lobbying, financial and campaign contribution disclosures
  – Internet: Web pages, address and telephone information, Facebook
Public Integrity: Challenges

• Fierce competition for limited resources and outlets

• Limited Resources for Government Oversight
  – Federal IGs: 13,600 FTEs and $2.2 billion budget to oversee $3 trillion budget and 2.1 million FTEs
  – Only ten states have IGs with enterprise-wide jurisdiction:

• Decline of investigative reporting, especially newspapers and especially at the local level
  – “It’s going to be a great time to be a corrupt politician.”
Public Integrity: Challenges

• “Shot selection” becomes incredibly important

• Despite improvements in access, nothing is easy or cost-free
  – Limits of FOIL and the need for patience – Investigation of Russell Harding
  – Labor intensive and time consuming – $200,000 for three part newspaper investigation
Practice

• Lisa Hamilton, Prairie State Energy
• Kerwin Olson, Edwardsport
• Robert Ukeiley, EKPC – JK Smith Plant
• Larry Shapiro, Cobb EMC