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Ben Eikey: Welcome to Oversight Matters. A podcast that gives you a behind the scenes look at legislative investigations around the country and the people involved. This is Ben Eikey, and I am your host. This podcast is brought to you by the Levin Center at Wayne Law, in Detroit, Michigan.

Our guest today is California assembly member, Ken Cooley, chair of the Rules Committee in the California State Assembly. Assembly member, Ken Cooley is an expert on state of California legislative oversight. He was integral in the writing and publishing of the California state assembly's legislative oversight handbook, and co-chaired the legislative oversight working group with the Council of State Governments West. We at the Levin Center are thankful he is here to share his knowledge and favorite experiences with legislative oversight on the podcast. Thank you for joining me today, Assembly Member Cooley.

Ken Cooley: Well, I'm delighted to be here, Benjamin. Thank you very much. Appreciate the invitation.

Ben Eikey: Well, thank you so much. I suppose we should just start right off with this just very impressive legislative oversight handbook that you had such a role in putting together with the California State Assembly. Could walk us through what compelled you to take a look and decide this was a really good idea to go forward with? What's what was the purpose and what is your hope for it?

Ken Cooley: Right. No. Well, it's interesting. I've had a long career of involvement with legislative processes. I'm an attorney and I actually started working in the California State Capitol back in 1977. I was eight years, the top staffer in the building to the rules chair, which is the job I am now. Then, and by the late 1980s, I was a lawyer and I was chief counsel for one of our big policy committees on banking and insurance. I can talk more about this, but we did oversight hearings into the collapse of the Coastal Insurance Company and also Executive Life, another insurance company that ran into trouble. They had problems with social junk bonds, which was sort of a thing, a big thing in the 1980s.

Then the voters of California imposed term limits on the legislature. Those kicked in, in 1996. In my house, members could serve at most six years from 1996 forward. That changed in 2012 when I was elected. Now you can serve a total in either house of 12 years, but they extended the assembly term from six to 12. The Senate term had been eight years and it is now 12, but I knew that back in the prior to term limits, both houses of the legislature had a very aggressive oversight activity and it was all keyed upon the policy committee.

Basically, the legislature hired subject matter experts to staff our policy committees. They took on the job of analyzing all the bills that came through in their subject matter. But then they also devoted time on each calendar year to just looking at the agencies and issues in their field of expertise and bringing forward an oversight agenda for the legislature when we were not so tied up with bills.

I perceived that prior to term limits, oversight was a huge component of the legislation's annual work and a very important aspect of accountability for voters for the public to ensure the check and balance function of governors being fulfilled, not just because someone had a bill in that area. They look back at the whole body of law. Really as an opportunity to, now that we have longer serving members, the purpose of the handbook was to enable new lawmakers to dive into oversight, to understand how it might be done, to shorten the learning curve and strengthen the ability of chairs and vice-chairs to be very organized, systematic, and effective in oversight when they didn't have decades of prior experience.

In the old days, in California, everyone talks about a speaker, Willie Brown, who was the speaker for an astonishing 14 years, but he had been a member for 18 years before becoming speaker. We had this one senator, Ralph Dills, who when he wrote, when he finally left the Senate and served for decades. So it's sort of, how do you equip lawmakers who may not be around for decades to be effective in oversight and checks and balances?

Ben Eikey: That mission that feels so complimentary to what we do here with the Levin Center and this focus on legislative oversight, because term limits, that was a kind of a national movement that happened right during the same time in California. We're of course headquartered in Detroit, Michigan and state of Michigan. Our legislature, we have some of the strictest term limits in the country. Very similar to what California had prior to their reforms in our state house. You can serve six years. So that's three, two year terms, and in the state Senate, you can serve eight years, two four-year terms and that's it. It's fast. It's very fast.

Ken Cooley: Oh yes, and if you like to work, you're focused on what you would maybe do next, that's just the way life is. We found that with six years maximum opportunity to serve in the assembly, people were often gone before year four started. So yeah, this whole topic I think is very important to democracy, very important to the legislative branch of government. We are the people's branch. We are the voice of the people. So accountability, which is a treasured element of our American democracy really ought to start in the state house with lawmakers.

This booklet is really all about developing institutional capacity. I also always want to point out that sometimes the Capitol, when you deal with bills, you get sort of what I call the mad magazine version of politics. I don't mean any disrespect, but sort of the spy vs spy. You get that partisanship element that enters in to how bills get considered and which bills move. Whereas oversight is much more all of us on the legislative team, Democrats, Republicans, Independents are all on one side of the table looking across the table at the executive branch or other entity that you're interested in. Oversight is actually much more of a team sport for lawmakers. I feel that is a very important tonic in our times, to work together and grow this muscle of oversight on behalf of the people who brought us here.

Ben Eikey: One of the things you brought up that I was kind of curious to hear a little more about, you brought up some banking and insurance oversight background, looking at maybe Coastal insurance, kind of curious to hear a little more about that if you don't mind.

Ken Cooley: Sure. So really, to have two big insolvencies was shocking and the purpose of the hearings were to delve into what had gone on. There was some concern that when you peel back the transactions, that some subsidiaries were going sold at one price and then purchase back at a different price, there's some things that are going on, or maybe they had a marketplace explanation, but there was a worry that there might have been self-dealing involved.

The legislative hearings on the Coastal Insurance company was trying to peel back the layers on this complicated set of transactions. It stands out. It was unusual when the legislature does oversight. You have an array of powers up to, and including most often the power to subpoena witnesses, in which case you have a formal process of service of the subpoena, et cetera, et cetera.

In the Coastal hearing, we actually opted to use a subpoena method to bring in some of the officers for their participation, so then it's testimony under oath in a formal manner. That was the Coastal Insurance company and that was a set of hearings over several months.

We actually had an outstanding lawyer, Ross Sergeant, who was a member of the committee staff. We assigned Ross to do background research. He was very enterprising and figured out who are the key witnesses and what do other people feel they should know about in order to develop a very specific grid of questions we want to ask each witness? So that it wasn't just kind of, well glad you're here, what's on your mind? We had a track we wanted to run down, reason they were there and brought in witnesses to develop the facts we wanted.

Ben Eikey: When you're preparing for a hearing, like the ones that you were just discussing, what would you say are certain best practices?

Ken Cooley: I actually would say a best practice would be once a member has identified something that they think is an important issue, I would definitely say you ought to probably first go to your subject matter experts. If they're your committee staff, or whomever, I think you'd definitely want to have an early conversation with whoever you would rely upon and they would have credibility in the legislature as policy pros to make sure that what strikes you as noteworthy, that others agree with it, and that you can back up the topic with some substance and with an agreement that, yes, this does raise important public policy issues.

I think, number one, you better talk to your policy staff, however they are constituted, whether in the budget side or your policy staff. It may be academics that you work closely with, but you need to figure out that you seem to be on to something. Obviously these are trusted conversations. I certainly feel to simply be an individual who occupies a legislative office, this is most [inaudible] most important. And yet, if you can develop a bipartisan inquiry into matters of importance, that is very profound. I definitely feel that's something that honestly, I think people will appreciate today. People are appreciative if lawmakers can work together across the aisle and service important matters of public interest and try to shed light on them and forge a path forward.

Ben Eikey: Next, Assembly Member Cooley discusses effective methods for oversight in the state, legislature and utility regulation in light of a pipeline disaster.

I'm going to cheat a little bit. One of my favorite previous conversations that you and I have had is when you discussed this idea, this concept of the power of a phone call. Us at the Levin Center, we have, we have picked that up and use that quite a few times in our conversations in the future. Just would like to discuss that a little bit more. Let's say you're a state legislator you're trying to understand oversight, understand what exactly one can do with their own capacity in their current situation. Could you detail a little more just about that idea, because I thought that was a really powerful statement that you had previously in a previous conversation.

Ken Cooley: Yeah. Well, I do think that when you're a state legislator, you are backed up by the power of the constitution. You hold this office, you hold it in public trust. You do have the power to ask questions and you also always have the power, you know, to talk to your colleagues. So that becomes relevant because you may feel that you just clawed your way into public office by the thinnest of barges and that people may feel like it was a fluke even. You might feel it was a fluke, but once you take that oath of office, you are the occupant of that office. Then I think you can start looking around and say, well, what are issues?

You don't actually have to have a chip on your shoulder to call up an agency to ask, say, you want to have a conversation about something, but I think you are entitled to start asking questions. You'd like to get, "I heard something from it constituent about X or Y, or I saw something in the Deloitte register about something that's happening in our ag sector. I'm wondering what you can tell me about that."

I think you nowadays, you can certainly do a Zoom call. I think today if I were doing it, I would definitely call them up. I would arrange to get together. I would plan to do a, if you're not in the Capitol so that they could come over and see you in your office, then I would say maybe a Zoom call sort of thing. But I would definitely include and identify some staff whose purpose is to come in and join you in the call and just listen so that you have an extra couple set of ears.

I'd probably get two staff people and just introduce them. They're here, I'm looking at a subject, they're here to listen. So then when the call's done, we can debrief, decide where I want to go next. You are a lawmaker and I think it is the case that agencies get settled in their ways. Most agencies, if they feel that the statute tells them to do X, they're going to do X till the cows come home, unless somebody raises a question.

Citizens often would like to raise those questions, but honestly, agencies don't necessarily automatically respond because someone raises a question. But if a lawmaker calls and persists in it, then you start to get some attention. So yeah, I definitely feel even a phone call or work on a, you might develop a letter that is like a page and a half that raises some key questions. If you're doing a letter like that, I'd draft it according to how you would like, what you think the issues are.

Then I would visit with some of your available subject matter experts just to round table them, make sure, and I've been guilty of this. I can have an initial impression which may have a kernel of truth, but I've missed something. You have the private conversation with your expert staff to make sure that you don't do something silly like that in a written letter. You try to make sure that the points you're going to raise are meritorious, they have some weight and they're not easily turned aside. Then put that together in writing and just say, I'd like to have a conversation about these.

I just think, this to me is all about institutional capacity, it's about making the legislative branch of government respected an equal partner, it's an investment in your own voice, but actually in your institutional voice. Yeah, even a phone call can start pushing the first domino over.

Effective oversight is very much a skill anyone can master. We have chairs like we have freeways, filled with people of all different kinds of abilities. You do not have to be one particular personality type to be effective as a chair, running oversight. Whoever you are, whatever your basic orientation skill set, you can do fine in oversight because oversight, you really, you assemble the team and you let the team contribute to your success.

The purpose of this oversight guide is just to lay out an approach that how do you put together your team? Someone could, my vision for this was if I had a chair and a vice chair who spent 45 minutes or an hour and a half kind of scanning through the book with a pad of paper in front of them, they could put together a list that they agree upon of what they want to have happen next, working with resource people.

So that you just, again, a favorite funny quote is, there comes a time when you have to stop rubbing the motor and put the car into gear. I think oversight is just one of those things that we talk about it, but you just need to put the car into gear. Once you put the car into gear, all kinds of things will happen. The biggest thing is you go through a session where there is an uptake in oversight and across your legislature, or in several key places in your legislature, people will perceive that as something new has happened. Those members who are pathfinders will solve problems and become voices of experience for their colleagues and others will figure out that they have the same power too.

Ben Eikey: That's fantastic. Speaking of gears and shifting them, I would love to hear a little bit about the utilities regulation discussion. I know in our preparation meeting, you had mentioned some pretty interesting topics there. I'd love to hear a little more about that, if you don't mind.

Ken Cooley: Yeah, you bet. Well, again, it's just, what's our job as lawmakers, but to stand up for the public and stand up for right process, transparency? So 10 years ago this past September, in fact, it's weird, it was September 9th, which in California, that's actually the day we became a state in 1850, September 9th.

Ben Eikey: September 9th.

Ken Cooley: But September 9th 2010, we had a 30 inch natural gas pipeline down at the San Francisco airport that blew up in a community called Colma. Like a bomb going off, thousand foot flame up in the sky. People didn't even know what had happened. They didn't know if it was earthquake, what was it? It was a pipeline failure by the local gas utility company. This led to a lot of protracted hearings and inquiries. What happened? How could a 30 inch pipeline in a major urban area running through a residential neighborhood, catastrophically fail without someone realized that there was an issue there? I'm sure every state has its pipeline safety division that's supposed to monitor those sorts of things.

Anyway, that led to a great focus on how does that piece of the system work? How are they supervised? What's the role of our state public utilities commission? That, in the course of time, led to discoveries that people were very angry with that utility. There was lawsuits against that utility because people died and just the harm to the community. It came to pass that people figured out that persons affiliated with the regulatory process were having sidebar discussions with the utility about which judges they should try to get their case before, because these judges would be more lenient. That's not actually a public conversation anyone wants you to be having when you're trying to hold someone accountable.

Ben Eikey: As you said in our previous meeting, sunshine, it's an antiseptic.

Ken Cooley: Indeed, indeed. That's exactly right.

Ben Eikey: Looking at that today, are we already in a better spot today? Is as an area that further oversight to be explored?

Ken Cooley: Well, I think in California, I would just say the legislature's intervention on this subject matter in a whole series of hearings, sort of changed the conversation, forced change at the PUC revamped procedures. That's the Assembly Utility and Congress Committee. Those hearings are all available online if people want to look at what was done.

Now I would say there remains very active monitoring, but I feel that ... These were a series of hearings that led to change and significant change and greater accountability. I think people want government to be conducted in a fair and even handed manner and that the government is on the side of the public. In this utility area, the gripe was the commissioners were getting awfully darn close to the corporate power providers and the public was getting lost in the mix. At this point I feel we've had improvement. The explosion actually happened in the final year of Governor Schwarzenegger's tenure. So it was under Brown that a lot of the reforms were done, though his tenure was not altogether without controversy. It took about five years for a lot of us to work its way through the PUC and the legislature.

Ben Eikey: Next, Assembly Member Cooley discusses his favorite thing about legislative oversight and why oversight matters.

I'm curious if there's other just favorite oversight memories or oversight stories, things that you really would like to share on this podcast.

Ken Cooley: Well, I think I would actually say, Benjamin, getting this publication online was very important to me. It was a long ago goal. The way I approached it was I basically set up subject matters that I was interested in because it goes into all of our house rules. There's a lot of quotes on oversight because it helps create the vision. Our oversight guide is really, I skimmed the cream of all the expert talent in our organization, so it has my name on it and I'm the person that took the lead on compiling it, and I had a big hand in editing it, but it's our assembly chief clerk, the legislator's top lawyer, experts on our floor procedure, very senior committee staff. Across the board, we skimmed the cream, consolidate this and then put it online so anybody anywhere could take advantage of it.

You don't need to read everything. Read the quotes, they'll fire you up and then just skim through it. If you're a chair, just skim through it with a pad of paper and just look for things that you might like to try. Benjamin started us on just a phone call. That's a good way to start oversight, or a letter. It's backed up by your office and the state constitution.

So you may feel you're sort of a neophyte at this, but just start stepping out. I really feel, don't let the character of the book intimidate you. Just take a pad of paper and say, what are the ideas I want to jump on? Oversight does matter. It is how we embody our responsibility in the people's house to be the people's voice.

Another thing that members should have and should think about is if you have [inaudible] interests you, do you have your relationship with your budget committee chair, such that maybe you could do a joint policy budget committee hearing?

I think I mentioned my very abled colleague, Phil Ting of San Francisco, who is our budget chair and Assembly Member Ting has been very willing to partner with our policy committee. So the accountability committee, the GO committee, the banking committee, where you put together the policy stuff from the standing committee, coupled with the budget insights from his staff. That's another way to just bring more of a unified picture of what's going on in an agency. Also, accountability.

I guess the last thing I'd just say, the awesome thing about oversight is, California is a code state. Every year we adopt new laws and we put them in the code books, which would line a big bookcase if I was sitting in front of it. Any given year, your committees are only focusing on what's new in the bills. Whereas oversight is the thing that lets a chair go back to that whole body of law that fills all those volumes and figure out what's going on there.

Has the law changed? Is there something about the world has changed, that a different approach might be warranted? This is an old figure, but I know going back to about nine years ago, here in California, we had 13,000 pages of regulations, which has a lot of regulatory material, all key and office statutes. Someone's been on the books for 50 years. So I think just making sure you know what's in the law and what's being administered just so you don't have an agency telling people we've got to do X, when that's kind of dubious support.

Ben Eikey: I've been saying it the last couple of days, this idea, we're never just one or two bills away from solving our problems where we never will be. The legislation developing it's an important part of the job for lawmakers certainly. But I do think that oversight is every bit as important if not more because of that backlog of laws and making sure that things are being followed in accordance. It's an essential part of being a lawmaker.

Ken Cooley: Yeah. In a sense, if you're a committee chair, your work reviewing bills is somewhat reactive. You're on that topic because someone put a bill in, whereas oversight, the whole subject matter of your committee, you could delve into. One of the ideas in this book is find out ... you get an intern, just started developing a loose leaf binder of all the agencies in your jurisdiction, what's their budget? When was it last increased? Who heads it? What programs do they administer? Something like that, it can just be a long-term project, but as it gets done, it becomes sort of the Bible of your committee. It lets you figure out how to follow up a question.

Ben Eikey: To follow up with my final question for this podcast is generally, broadly speaking, why does oversight matter? We all have limited time. We have limited bandwidth to look at a lawmaker and all of the tasks that are in front of them. Why does oversight matter? What is it about this that makes it something that both of us were compelled enough to be on this podcast together, to dedicate a significant portion of our career worlds towards? I guess the question is just plain and simple, the name of the podcast. Why does oversight matter?

Ken Cooley: I think oversight matters because it is the one way that the legislature really reminds people of their business and exerts themself. You can drop a bill and maybe someone will notice or maybe not, but you start looking at what agencies in your committee are doing. They will take note of you as a member. They'll take note of your committee. I think there is intended by our nation's founders, a healthy tension between the branches of government, checks and balances. But we are the body that embodies the people's house, so most theorists say that the first body of government, and ours stands for democracy, is the legislative branch of government because we hold the people's power.

The tragedy of term limits is because it cuts down the experience of lawmakers, it weakens their clout, it weakens the institution. Oversight is a way to claw that back, to reassert yourself and to represent the public on the priorities you think are important, and to remind anybody in an executive branch agency that they are not backed up by the votes of people who put them in office and that they are charged with administering the law, but it is the job of the legislature to enact the law?

We're entitled to weigh in on whether we think they're doing it right and if it needs an update to get that update. To me, we hold the public's power and trust and oversight is really the way we can manifest that. Outside the strictures of the [inaudible], if you've got a 90 day session, you can still be writing letters nine months out of the year, and do your follow-up.

Ben Eikey: To wrap up, I asked Assembly Member Cooley to share something really interesting he shared with me in the meeting prior to our podcast recording.

Assembly Member, thank you so much for joining me. I do have one final thing. In our last meeting, I really liked what you had to say. The quote from Supreme Court Justice, Anthony Kennedy. I don't know if you have it right off the top of your head, if you don't it's okay. But I really, really liked that story if you'd be willing to share that with us. I thought that was great.

Ken Cooley: Okay, yeah. This is the back story here is I studied law at McGeorge law school, and I was a young married guy with babies at home. So I was a night law student, but McGeorge School of Law, Sacramento, California, very fine law school. I'm an 84 grad.

I didn't get this particular professor, but the night program, one of the great things about McGeorge Law School, except for reasons that made sense, which I'll explain, night law school constitutional law was taught by the Federal Court Justice, Anthony Kennedy, who went on to be appointed to the us Supreme Court. Terrific individual, but he taught con law at my law school and he was very devoted to it. He's a very scholarly individual. He had had some personal tragedy in his life the year before I took constitutional law. So he actually had the great, good sense to take a year of sabbatical, which is why I didn't get him.

But in 2003, I had run for office in the fall of 2002, and voters approved city hood branch of [inaudible]. The city was going to start on July 1st of 2003, that's when I was going to get sworn into office. A letter arrives at my home in Rancho Cordova, California on the little, little stationary, the private stationary from the Chambers of Justice, Anthony Kennedy. The message is fabulous.

"Congratulations to you and all of your colleagues for working to reinvigorate the principle of participatory democracy. Self-government must not be an abstract ideal, but it must be a reality. And we must be unceasing in our efforts to make it more effective and respected by our people." That was dated June 18th 2003, private letter of US Supreme Court Justice, Anthony Kennedy, to me.

I think back, this message, the foresight, the [inaudible] of this letter that we need to all always work very hard, unceasing, at making self government respected. I think we are certainly in a time when that is being tested. I think people who earnestly seek to uphold their oath of office, to be that voice of the public, to stand to step into the gap for the public. This is a vital role. I think it aligns with the path of our American democracy hinges upon the devoted service of those in elective office and inspiring the staff you work with that we are the ones that will make self-government respected, more effective and respected by our people. I think oversight is a vital part of that, but yeah, I treasure that Anthony Kennedy quote.

Ben Eikey: It's very wise words to conclude this podcast. Assembly Member Cooley, thank you so much for such an engaging, informative, I think we covered a lot of ground during this podcast, and thank you again.

Ken Cooley: That's good. Very good. It's an honor. Honor to serve, honor to join others in service. Thank you.

Ben Eikey: Thanks again.

Thanks for listening. Oversight Matters is available anywhere you get your podcasts. Subscribe, review, rate, and share with others interested in oversight and good government. Again, my name is Ben Eikey, and Oversight Matters is a product of the Levin Center at Wayne law in Detroit, Michigan.