Ben Eikey:

On the second part of the first episode of Oversight Matters, Elise and Linda continue their discussion on congressional investigations with a look at sweepstakes, cracks in the wall of Swiss secrecy and how congressional investigations can result in positive reforms. Thanks for listening.

Ben Eikey:

What started as a letter Linda's father received saying he had won millions of dollars, ended up being a sweeping congressional investigation into sweepstakes. Hear about how this investigation resulted in legislative action against sinister predatory practices.

Elise:

The example I gave had to do with credit cards, but what was really interesting in working on oversight and particularly for Senator Levin is the wide range of investigations that he did. We did money laundering, corporate misconduct. Tax dodging is one of his favorite topics. All kinds of offshore abuses, credit card... excuse me. The social security disability issue, sweepstakes from people who were abusing those programs. So one of the fun things about oversight is that you can learn about a lot of different issues, get into them in detail and really understand them mostly through case studies, actual specific case studies, so you can figure out what really is not going right, what really needs to be fixed. And then if you can be that fact-based, hopefully you can come up with a solution that both sides of the aisle can support.

Linda:

We started the investigation into sweepstakes solicitations. And this was where a lot of sweepstakes companies, especially magazine publishers were targeting senior citizens to get them to buy lots of different things including magazine subscriptions by promises that they would win the sweepstakes. And the way we get into that was my dad who was in his 80s was buying all this, really I got to describe it as crap, through the mail. And then I would say, "Why did you that? Why'd you buy this record? Why would you buy this magazine subscription? Why did you buy this little tchotchke?" And he goes, "Because look, Linda, it says, right here, they mailed me that I have a much better chance at winning the million dollars." And he says, which is where the pathos comes in, in terms of senior citizens, "I want to leave you and your kids some money and I don't have money to leave you and your kids at this point."

Linda:

So I thought, wait, wait, wait, these solicitations were just off the charts about. Dear Joe [inaudible 00:00:02:39], you have actually won, you are in line to win. And so I went to Senator Levin and said, "I'd like to look at as sweepstakes solicitations and see what's up." And so as we got into it, he said, "Yes, go ahead." So as we investigated and got into it, we learned that through AARP, the association for senior citizens, the for nonprofit for... was one of their biggest complaints, was sweepstakes solicitation. And went to the post office. And the post office said it's one of their biggest mail fraud. Number of investigations into mail fraud were these sweepstakes solicitations. And the state's attorneys general all said, "My God, these are the big consumer fraud cases that we face across the country."

Linda:

So it wasn't my dad, I guess, my father, it was an enormous problem nationwide. And so we did similar to what Elise said, you investigate, you get all these documents, you subpoena all the documents from the magazine publishers and the companies that are doing... Reader's Digest, and Time Warner and-

Elise:

Publishers Clearing House.

Linda:

The Publishers Clearing House, Michigan Bulb, which you had to order plants and things which would [inaudible 00:04:02] in our own backyard. And then you identify stories through state's attorneys general, who are actually representing many of these people individually. And they came and told their really quite heartbreaking stories. And then we brought in, as Elise said with her credit card CEOs, we brought in the CEOs of these companies. And because we had the power of subpoena, we had their emails and we read... Or their messages to themselves. I can't remember if they had emails at the time, but I think they did. Where they were describing how they were going to seduce the senior citizens. It was very Machiavellian, it was very sinister.

Linda:

And then the CEOs had to try to explain it. "Oh, well, we didn't really mean that. Or blah, blah, blah. This is entertaining for these people. They don't have anything else to do." And so it ended up that we passed legislation, it was overwhelmingly supported. And we stopped all those obnoxious solicitations, despite-

Elise:

I mean, as I recall that legislation, it did a lot of really just practical, useful things. For example, if you wanted to stop your relative from getting these solicitations, the companies had made it so difficult, you just couldn't stop the solicitations. But in that legislation, you set up a mechanism so that a family member could write to a company and say, "Stop sending this stuff to my relative." [inaudible 00:05:45] and an ability for the post office if they were aware of a mail fraud going on, they could stop the mail from going to the recipients. And those were just two of the very useful provisions that didn't exist before that [inaudible 00:06:01]

Linda:

Well, the other part of it was we said you can't say you've won if you haven't won. We literally just define what they could say and what they couldn't say and what they couldn't put on the envelope. Joe, you've won or you're one of the few who has the possibility to... It has to-

Elise:

They couldn't make the envelopes look official like they came [inaudible 00:06:24]

Linda:

So it was very prescriptive. The legislation ended up being very prescriptive. So when people get mad at government for being prescriptive, there are times when being prescriptive is what's helping the American people. And sometimes you have to be prescriptive. So it's not all one answer. But in that case, being prescriptive is really, really important. [inaudible 00:06:49] we had one, one witness, her entire bathroom was filled with tchotchkes that she had bought hoping to win. Another one that the daughter testified that her father, and he was crying at the witness table, had spent the money that he wanted to give her for her law school. And another person had gone to Tampa, had bought a ticket to Tampa because that's where he was going to pick up is sweepstakes check. Both-

Elise:

And there were examples of people had to go back to work because they had spent all their savings.

Linda:

It was very serious, very serious.

Ben Eikey:

Up next Elise and Linda share their favorite Oversight memories. Cracks in the wall of Swiss secrecy. A $5,000 suit, perfect hair, charming accent, and an apology.

Elise:

So one of my favorite moments was an investigation that Senator Levin was doing, looking at secret offshore bank accounts that had been opened up at Swiss banks where wealthy Americans were putting millions of dollars and hiding that information from the IRS. So the tax authorities didn't know about it and didn't impose any tax on it. We got wind that this was going on. Senator Levin had an investigation that went on. We looked at in particular at UBS, which was the largest Swiss bank. One of the largest banks in the world. He was able to get evidence that 52,000 accounts had been opened up for US clients without disclosing them to the IRS with about $20 billion, that's billion with a B, and assets that had been hidden from the IRS and from which taxes had never been paid.

Elise:

So we had our hearing, we brought forward this information, we said to UBS, "You have a large presence in the United States. You have a lot of customers here. We could subpoena the CEO of the US branch of UBS, but this activity, this wrongdoing is not happening with the US people, it's happening with your colleagues in Switzerland. Now, we can't subpoena them. Our subpoenas don't reach outside of the United States, but you really ought to have somebody from Switzerland come and testify." And sure enough, UBS did. And they had this high ranking official from the bank come to the hearing. We'd never seen him before. He had on his $5,000 suit and his gorgeous hair. And he had a beautiful accent. And the first thing he said after he sat down is that the bank wanted to apologize and they promised never to do it again. And we were so floored by that response. We had no clue beforehand that UBS was going to admit that these facts that were facts and that all of this had actually happened.

Elise:

Senator Levin had a whole stack of very tough questions he was going to ask this witness. He put them aside and he said, "Well, what exactly are you apologizing for and what exactly is it that you're never going to do again?" Meanwhile, I'd been so floored at the guy admitting everything and apologizing and I'd sent a little note over to Senator Levin and it just said, "Wow." And I put it over there to him so he could see how surprised I was. The witness then admitted that they had been opening up secret Swiss bank accounts for wealthy US clients, had hid them from the IRS despite an agreement where they were supposed to disclose them that they had entered into. And they admitted it was billions of dollars involved and that they had actively helped people hide money from the IRS. Now, the reason they admitted that was not just because we had been doing our investigation, but the Department of Justice had a parallel investigation going on at the same time.

Elise:

Now, Congress, when they do investigations, they can't throw anybody in jail, they can't fine them, they're doing it for policy reasons. But the Department of Justice can throw people in jail and can fine them. And UBS knew that DOJ was hot on their trail and they were going to come after them. And they had decided that they were going to enter into a settlement with the Department of Justice. And that's why they admitted it. They wanted to do it on their own terms at our hearing surprising us, but still we were very... The reason I remembered is not only because of the witness and what he said and how surprising it was, but the result is it was the first time Swiss secrecy had ever started to crumble. That wall of secrecy started to come down. And it was an earthquake around the offshore world.

Elise:

Many jurisdictions that were doing similar things were absolutely shocked that UBS had not only admitted it, but the next thing they did is they said they were going to turn over the names of some of their clients to the Department of Justice so the Department of Justice could prosecute the tax dodgers. So that was a remarkable moment. And to me, it just showed the value of oversight. Because if we had not done this investigation, even if the Department of Justice had done it all, would have been very quiet. And we were able to make the information public. We had specific stories about what had happened, and it was a very powerful moment. As a result of that hearing, Congress eventually enacted legislation requiring foreign banks around the world, that they have a if US client they must disclose it to the IRS and if they don't, they can be subject to an excise tax on their own US earnings. And so that has been a very powerful development.

Elise:

Other countries around the world said, "Well, if our guys have to report US people to you, how about US banks that have secret accounts for our clients, how about you reporting those accounts to us?" And US said, "You know what? You're right." And we now have in place, starting in 2018, so this is very new, a annual exchange of information about bank accounts that have... They have certain minimum amounts of money, $400,000 for a couple in the United States. So and these are accounts with very large amounts of money, but now over 100 countries around the world exchange information about bank accounts being opened by nationals from other countries. So that's pretty remarkable development from that and that investigation.

Ben Eikey:

Next, Linda shares why she believes in oversight and her memories of conducting oversight on the Enron board.

Linda:

Congress does not have the power to prosecute. Congress has the power to legislate and to get the facts that it needs in order to legislate and to oversee both private and public affairs to determine whether current legislation is sufficient or whether it's working or whether additional legislation needs to be done. So when things go really bad in terms of public policy, Congress can't indict anybody or send them to jail. But what it can do is it can make the conduct that is egregious public. And it's a bit of ashaming in that sense. And in many cases, it's the only, quote, shaming that occurs. Because when you're talking about the real higher ups, they don't often go to jail for doing things that are pretty egregious and very harmful to the American public. So good examples to me are when we did an oversight of the Enron board. Enron was this huge corporation. I think it was the fifth largest corporation in America at the time. That imploded because the top, in Enron, people had done terrible things. Ken Lay and Jeff Skilling and Andrew Fastow.

Linda:

And the focus was on them but they had a board of directors who were the top people in terms of the business community. And those people were responsible for following what was going on at Enron. And so we decided we were going to hold them accountable and find out what decisions did they make and why did they let Enron runs so amuck on their watch. So we brought them in and they have to go before the Senate panel and they have to raise their hand and swear to tell the truth. And it's a very uncomfortable situation for them. So nothing really happened to those people, but that particular hearing was, to me, something gratifying because it held them accountable for what they did. Another example-

Elise:

If I could add to that, Linda. Actually a few things did happen to the board. There was a requirement for all boards to have an audit committee. [crosstalk 00:16:06] expertise. In addition, for the first time ever, we set up a public company, accounting oversight board that started to police the accounting firms. Because the accounting firms had also allowed Enron to play all these financial games and cook their books and hide it from the public. And so for the first time we had some policing of the auditors, which [crosstalk 00:16:36] and that's now caught on around the world as well. Many countries now require their auditors to undergo scrutiny.

Linda:

Right. Good legislation, good policy changes resulted. But when I'm talking about is personal accountability and that they have to face some sort of sanction or punishment [crosstalk 00:16:57] And so public accountability is important. So that was with the Enron board. When we were looking into how Citibank, Citi Group helped launder money for top political figures in foreign countries, John Reed, the president of Citibank had to come and testify before the US Senate and explain himself and explain the bank. And Lloyd Blankfein had to... The head of Goldman Sachs had... He was never sanctioned for what Goldman Sachs did, but he had to come. And what was it? Several hours he was there for.

Elise:

That was our longest hearing ever. Senator Levin went for 11 hours.

Ben Eikey:

11.

Elise:

9:00 in the morning until 10:00 at night.

Linda:

So to me, one of the satisfying aspects of oversight is to at least hold accountable people who are in positions of power, who are abusing their positions of power and who have had a role in really damaging individuals at the average person's life. And if you can't get them on a criminal charge at least you're holding them accountable for what they did.

Elise:

I have to agree with that. I found one of the most satisfying aspects of doing oversight is simply writing up what happened. First you find out what happened, and then you write it up. And you have to be careful and you have to be fair, but there are such things as facts. There is evidence that shows you what really happened. And a lot of times when we're looking at a complicated organization, a big corporation or a bank or something like that, even the people within the institution don't really know what happened because they don't have access to other people's emails and what they did. And when we put it all together and show what people did, their coworkers learn it, their family members, their communities. And to me, it's very important to just let people know what you did, because that can have a deterrent effect as well.

Ben Eikey:

Speaking of deterrent effect, listeners, I will never subject all of us to an 11 hour long podcast. I promise.

Ben Eikey:

Next, Elise shares why she believes in oversight for solving problems and her hope for this podcast.

Elise:

I really buy into the saying that you can't get good government without good oversight. And so I'm all about oversight as a way to identify problems and then do something about them. And I'm hoping that the Levin Center and this podcast will spark greater interest in oversight and how you use investigations to solve problems, how those investigations ought to be bi-partisan and they ought to be fact-based. And sometimes we don't see that in the oversight and investigations and hearings that are done on Capitol Hill, but sometimes you do. And when those happen, we see Democrats and Republicans getting together, reaching consensus on the facts and sometimes agreeing on what to do about them to improve society. So that's my dream to reinvigorate oversight as fact-based and bi-partisan in depth way to solve problems.

Ben Eikey:

Thanks again to Elise and Linda for being our first guest and to you for listening on. Our next episode of Oversight Matters, assembly member, Ken Cooley from the California state assembly will join us to further our oversight discussion. And if you know of somebody we should interview on Oversight Matters, let us know at levincenter@wayne.edu. Again, my name is Ben Eikey and this podcast is brought to you by the Levin Center at Wayne Law School. Thanks for listening.