

Chapter 1

The Watchdog

Fraud, waste, abuse, and corruption retard and can destroy a nation's development. We understand the essential need to push back, to control, to resist those vices. More fundamentally, we fight back because those who steal the public's goods or waste our resources anger us. "Taxes are the price we pay for civilization," Oliver Wendell Holmes famously remarked. We pay the taxes, and we will fight those who would cheat us of the civilization we should get in return.

The immediate pages ahead summarize our experiences in government oversight, explain how those experiences fit into this book's mission of inspiring others, underscore the critical importance of that work, and introduce one model oversight effort and the model "watchdog" who undertook it. We offer the model as something of a template for the oversight efforts detailed in later chapters, as well as for those that lie in the future, to be conducted some day by our readers.

We don't fancy ourselves the very best watchdogs ever, but have spent most of our professional lifetimes in the effort. We have known each other for more than thirty years and during that time have spent countless hours talking through the practice of government oversight, both as practitioners and as teachers of the practice. Both of us have worked on or led oversight investigations in our respective careers as legislators and aides to legislators, prosecutors, auditors, mayors, and other elected officials. In his first book, *Reforming Government*, practitioner-scholar Dan Feldman wrote about his experience as a congressional and state legislative staffer conducting oversight investigations in New York City in the 1970s. Feldman then spent nearly two decades as a member of the New York State Assembly where he led legislative oversight efforts focused on the state's prison system. He also served in key leadership positions in the New York State Attorney General's office—under then Attorney General Eliot Spitzer—and in the office of the state's chief auditor, New York State Comptroller Tom DiNapoli.

David Eichenthal spent fifteen years in state and local government in the New York City Comptroller's office as an assistant to Liz Holtzman, as an Assistant Inspector General working to combat organized crime's influence on the construction industry, and as a top aide in the New York City Public Advocate's office (then run by former Nader Raider Mark Green) leading investigations of then-New York City Mayor Rudy Giuliani's administration. Eichenthal subsequently moved to Tennessee where he took on Wall Street's role in public pensions.

Although this book draws on cases from all over the United States, many of the case studies that we highlight in the chapters that follow are based on our own efforts to practice "the art of the watchdog." Those latter case studies make available to the reader the deeper level of knowledge and insight that should accrue from personal involvement.

If you are a practitioner, we will arm you with tools and techniques designed to combat fraud, waste, abuse, and corruption. If you are a student of government—but more importantly, if you care about the quality and integrity of government—we aim to provide you with a story of the good and the bad of current oversight, with an eye to improving our government.

Why an art? Why not a science? In part, it is because we believe that effectiveness as a watchdog depends at least as much on who you are as on what you know. If you are fatalistic, phlegmatic, and like to "go with the flow," don't make oversight your life's work.

The best public watchdogs combine a powerful indignation with relentless persistence. Public watchdogs need a low "boiling point"—an intolerance for abuse and injustice. So long as they share that burning need to fight abuse and injustice, a wide range of citizens can launch victorious oversight efforts as watchdogs: lawyers, legislators, auditors, investigators, journalists, staff for elected officials or civic groups, others. Still, success rarely comes quickly; almost always, it demands much more than David's slingshot conquest of Goliath. In this arena, Goliath revives and recovers a few times, so David needs to monitor his results and follow up on his efforts for a few months or years.

Why Oversight Matters

It is often said that people first decide, then justify; that is, they make decisions on a "gut" level, and afterward construct an intellectual rationale to justify their choice. On a day-to-day basis, we fight fraud, waste, abuse, and corruption because they infuriate us. But sound intellectual arguments justify a commitment to the practice of oversight.

Simply put, unchecked corruption can render a regime—or government—dysfunctional.

The author Thomas Friedman tells a great story of the Asian and African officials who visit each other's homes. The African wonders at the opulence of the Asian's home, so the Asian points to his beautiful picture window, and asks, "What do you see?" The African notes the large new bridge. The Asian points to himself, and says, "ten percent." Some years later, the Asian visits the African at home. Now the Asian is impressed: The African's home is far more opulent than his. The African says, "Look out the window." The Asian does so. The African asks, "What do you see?" Puzzled, the Asian says "nothing!" The African smiles, points to himself, and says, "one hundred percent."

Political conservatives may look at the effort to root out waste, fraud, and corruption as consistent with their goal to shrink the size of an inefficient government. For liberals who believe in an active government, there is an obligation to guarantee that the limited resources entrusted to the government for worthy purposes go to their intended use rather than to line the pockets of corrupt officials and that agents of government vested with power respect rather than abuse the public trust.

Our obvious enemies are those who would cheat and steal from the public and those who through inefficiency would waste valuable taxpayer dollars. We also have less obvious enemies. Those who suggest that all politicians are corrupt and all government is inefficient spread a lie that undermines our democracy and the integrity of our system of government. The more citizens who accept such a view, the fewer who will bother with oversight, or will react with outrage when they see fraud, waste, abuse, and corruption exposed. The more that apathy replaces outrage, the less that "watchdogs" will be able to generate pressure to force reform.

Moreover, that view leads us down a path where more and more Americans look to their government and simply say, "why bother." We believe that democracy is a participatory sport—and that the best way for democracy to succeed is for Americans to engage in it. Thus, the goal of oversight is not merely to make our government less wasteful and corrupt, but to build trust and confidence in our very system of government. Effective oversight that leads to more effective and efficient government is critical to maintaining the democratic values that we cherish. For us, in the participatory sport of democracy, we often root for the referee.

And that's why we wrote this book. Because at a time of tea parties on the right and Occupy Wall Street on the left, as the size of our national government has grown and fiscal pressure forces our state and local governments to shrink, as Republicans and Democrats in state capitols and city

halls struggle to continue to deliver basic services to their constituents, effective oversight can play an extraordinary role in righting how government works.

Yet, in the past decades, the role of the government watchdog often has become more about the scandal of the day—or the hour—and what gets covered on CNN rather than the hard work necessary to investigate and expose scandal and convert it into reform. We write as the role of investigative journalism is being diminished, even as access to information has never been greater. We write in fervent hope that the “art of the watchdog” does not become a lost one.

Liz Holtzman’s Efforts to Uncover Nazis in America

Both of us—at different times and in different roles—worked for one watchdog whose characteristics and accomplishments offer a model to be emulated by those who would serve the cause of justice—Elizabeth Holtzman. As a member of her congressional staff, Dan Feldman helped lead the investigation of the federally funded summer lunch program that led to felony convictions and program reform. As a member of her New York City Comptroller staff, David Eichenhal uncovered links between city contractors and organized crime and helped block more than \$250 million in unnecessary construction projects. Those efforts fit within a more rigid and restricted conventional notion of the watchdog role. But the watchdog, in our view, more properly includes the broader range of targets encompassed by the somewhat amorphous term *abuse*, understood as the exercise of government authority for bad purposes. In that regard, Holtzman’s work in challenging, exposing, and correcting the federal government’s willingness to look the other way when it came to the presence of Nazi war criminals in the United States may be the best example we know of the art of the watchdog.

Liz Holtzman remains the youngest woman ever elected to Congress, the only woman ever elected as district attorney in New York City, and the only woman ever elected as chief auditor of the nation’s largest city. Early on, Holtzman had taken on a leadership role in major issues before the Congress—ending the Vietnam War and promoting equal rights for women. At home, Holtzman also was hard at work building the kind of constituent services needed to win local support and re-election. She would also soon serve with distinction on the House Judiciary Committee in its impeachment proceedings of President Richard Nixon. In other words, she had quite a first term.

In 1973, Holtzman was still in her first year in Congress. Just a year earlier, she had defeated fifty-year incumbent and then-Chair of the House Judiciary Committee, Emanuel Celler, for his Brooklyn, New York seat.

Step 1: The Whistleblower

In the middle of 1973, that chaotic year of national turmoil, perhaps because of her outspokenness on other issues, a whistleblower from the Immigration and Naturalization Service (INS) approached Holtzman and asked to meet with her confidentially. At the meeting, he told her that the INS had a list of Nazi war criminals living in the United States but was doing nothing to bring them to justice.

These individuals had come here after World War II, in some cases on their own but also in some cases with the assistance of the U.S. government. For Holtzman, it was a shocking revelation. But at the time, no one within the federal government—or among outside organizations—was really focused on the issue.

As Holtzman notes, “Public interest in the Holocaust was not widespread at the time. The Simon Weisenthal Center didn’t exist. Survivor groups had little political involvement, although the Jewish War Veterans sometimes spoke out. And obviously the U.S. government made almost no effort to take action against the Nazis.”

Step 2: The First Hearing

Holtzman served as a member of the Congressional subcommittee with oversight over the INS. Several months after her meeting with the whistleblower, the commissioner of the INS appeared before the subcommittee during what Holtzman describes as a “relatively routine hearing.” She used the opportunity, however, to begin asking questions about the issues raised by the whistleblower. When Holtzman asked if, in fact, the INS had a list of Nazi war criminals living in the United States, the INS commissioner testified that they did. Holtzman then elicited testimony that there were fifty-three alleged Nazi war criminals on the list. When Holtzman asked what the INS was doing about this, the INS commissioner could not provide an answer.

Step 3: Document Review

It would have been easy for Holtzman to leave things as they were—she had gotten the admission and surely the INS would begin to address the

matter. Instead, she demanded to see the files of the fifty-three alleged war criminals who were living in the United States—and personally reviewed the material at the INS's New York office.

Step 4: Public Call for Action

After reviewing the documents, a month after the initial hearing Holtzman went public—blasting the INS for failing to conduct adequate investigations and proposing the creation of a War Crimes Strike Force within the INS.

Follow Up and Follow Through

These initial steps—and Holtzman's initial actions—led to an eight-year effort to translate oversight into action and results. She was the watchdog who, once she had the wrongdoer in her bite, would never let go. Her persistence turned what might have been just a good one-day story on federal inaction into a career-defining pursuit.

That was certainly the view from inside the INS. An internal Justice Department review of the history of the U.S. role in tracking down Nazi war criminals concluded that “Holtzman did not merely hector; she got down in the trenches. She met at her office with INS investigators to review the leading investigations; she visited INS' New York office and spent hours reviewing the files; and she sent the INS detailed critiques and analyses of the agency's work.”

It took time, but Holtzman's continuous prodding started to produce results. In early 1977, Holtzman called for new Congressional hearings—this time focused on the INS and Nazi war criminals. At the hearing, the INS announced that it was changing procedures for investigating Nazis and would create a centralized task force, much as Holtzman had recommended several years earlier. The INS also ordered all closed cases involving alleged Nazi war criminals still living in the United States to be reopened for review.

Holtzman's oversight efforts also translated into legislative action. In 1978, Congress passed the Holtzman Amendment making it easier for the United States to both deport Nazi war criminals and exclude them from entry.

Even after the task force at the INS was created, Holtzman continued to follow up and monitor progress. The head of the so-called Special Litigation Unit, Martin Mendelsohn, “was a frequent visitor to Congresswoman Holtzman's office.” And when funding for the effort became an issue, Holtzman proposed to move the unit to the Department of Justice main building to ensure higher exposure and adequate funding.

Both the Department of Justice and the INS initially opposed the proposed restructuring. Again, combining her oversight role with legislative authority, Holtzman proposed to mandate the shift by statute. Six years after Holtzman's first questions at a Congressional hearing, the Office of Special Investigations (OSI) was created in the Justice Department.

Still, even with the creation of OSI, Holtzman "remained vigilant about OSI matters, issuing press releases to announce OSI filings and victories; exhorting the State Department to work with OSI to update its Watchlist (they did); demanding that State modify its visa application form to take into account new legislation precluding the entry of Nazi persecutors (also done), and notifying OSI when she learned of a potential subject." According to the one-time head of OSI Allen Ryan, Holtzman "had the reputation in OSI . . . of being . . . Ghenghis Khan incarnate. You'd think going to see her was like climbing Mt. Everest to see the Dali Lama."

Even after leaving Congress—as a local elected official and private citizen—Holtzman remained a supporter and prod of OSI. As of 2006, eighty-three persecutors had been denaturalized; sixty-two have left the country permanently as a result of OSI's work, and more than 170 were prevented from entering the United States. There is a pretty clear case to be made that because of Holtzman's relentless efforts as a watchdog, hundreds of Nazis were brought to justice who otherwise would have gone unnoticed in our midst.

Conclusion: The Art of the Watchdog

With nearly forty years of hindsight, it is clear just how decisive Holtzman's role was in this important part of post-war American history. There is little question that but for Holtzman's pursuit of justice, there would not have been an OSI, the INS would have continued to allow Nazi war criminals to live in our midst, and hundreds of war criminals would not have faced accountability.

In the coming chapters, we discuss the art of the watchdog—what oversight is, how to do it, and how it is practiced every day at the federal, state, and local levels in the United States. We discuss a series of case studies—some involving our own work over the years—of the exercise of oversight. But the story of Elizabeth Holtzman and the creation of the OSI should tell the reader much in just these first pages of our discussion of the theory and practice of oversight in U.S. government.

First and foremost, Holtzman was deeply intolerant of abuse and injustice. Not everyone would view the same set of facts—the federal

government's acceptance of war criminals in our midst—as an example of abuse. And, in fact, the federal government had taken no action—and was under no pressure to act—for almost three decades. Holtzman's deep sense of justice was part of what made her a good watchdog. Her “boiling point” when it came to injustice was lower than most people's and that pushed her to take on issues that others ignored.

Second, Holtzman understood the power—and her responsibility—to conduct meaningful oversight of an executive agency as a member of the legislative branch. Other legislators often focus primarily or exclusively on constituent service. Some deal only in the high-minded pursuit of policy through legislation. For Holtzman, asking tough questions and demanding accountability was a critical part of her work in Congress.

Third, she sought the type of information vital to performing the oversight role. We don't know why the INS mid-level officials—the whistleblowers—first came to Holtzman but it seems unlikely that it was by chance. Effective oversight starts with an understanding of the need to gather information from all possible sources.

Fourth, she seized every opportunity to discuss the issue. From questions at hearings to press conferences, Holtzman was able to take the issue of the government's inaction in response to Nazi war criminals to the public.

Fifth, she did the hard work necessary to get information and get results. Imagine a member of Congress personally slogging through agency files and offering detailed critiques of agency action and inaction. Oversight is not easy work and requires time and dedication of resources.

Sixth, she was absolutely relentless. Oversight is not for those who would yield to exhaustion, ennui, compromise or intransigence. Even after winning initial concessions and policy changes in response to her efforts, she continued to follow up and follow through—monitoring the progress of the effort, demanding structural changes, becoming a critical ally for budget issues and celebrating early successes.

For the local council member or state legislator, for the county auditor or state inspector general, for the watchdog situated at any level of power and authority from the highest to the lowest, the same tools that Liz Holtzman used to take on indifference to Nazi war criminals in the federal government can be used to take on more typical forms of fraud, waste, abuse and corruption at the state and local level.